

H. Hargrave
15 Feb
THE
FORM of PROCESS,

BEFORE
The COURT of JUSTICIARY
IN
SCOTLAND.

IN TWO BOOKS.

CONTAINING,

- I. The Constitution of the Sovereign Criminal Court, and the Method of their Procedure in Capital and other Crimes, with the Form of Procedure in Trials for Treason, upon a Commis-
sion of *Oyer and Terminer*.
- II. The Procedure of the Justice Airts or Circuit-
courts; the Manner of giving up Dittays, and
the Appeals from inferior Judges to these Courts.

Together with

AN APPENDIX,

Containing the Form of Process proposed to be ob-
served in the Sheriff and Stewart Courts in *Scot-
land*, in Criminal and Civil Causes, with Ta-
bles of the Fees to the Clerks and other Officers
in these Courts, &c.

The SECOND EDITION, with Additions and Amendments.

By JOHN LOUTHIAN Writer in *Edinburgh*.

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FORM OF PROCESS

D. R. 1870

The Court of Justices

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P R E F A C E.

HAVING had the good Fortune, in my earlier Years, to attend the Justiciary-court at *Edinburgh*, and likewise the Circuit-courts, I did, in the Year 1732, venture to collect and publish the Form of Procedure, in *Criminal Trials*, before these Courts; which met with due Encouragement.

SINCE that Time, many Alterations in the Forms, both in the Court of Justiciary and Circuit-courts, have been introduced, not only by particular Statutes, but also by Acts of Adjournal made in consequence of these Laws.

ON these Accounts, and, as it must be allowed, That a Work of this Nature is highly beneficial, whereby Persons that happen to be concerned in Criminal Prosecutions, may know how to prepare themselves for such Trials, I have been prevailed upon by many Gentlemen of Character, to undertake the reforming of the former Edition, and particularly to take notice of the several Alterations that have since happened.

THIS second Edition is divided into *two Books*, (keeping the Plan of the former Edition as near as possible):—The first of these

concern the Procedure in Trials before the *Justiciary-court* at *Edinburgh*, in capital and other Crimes;---and the second, *concern* the Procedure of the Judges in their *Justice Airts* or *Circuit-courts*.

To the first Book is added a Section *concerning High Treason*; in which I have shown what was High Treason with us, and what is High Treason by the Law of *England*, which is now made our Law in that Respect; to which is subjoined the Form of Procedure in a Trial for Treason, upon a Commission of *Oyer and Terminer*, as approved of by the Judges in *England*.---This last, it is humbly thought, comes properly to have a Place in this Work, and must appear useful, when it is considered, that three of the Lords of *Justiciary* are always to be named Commissioners in every Commission of *Oyer and Terminer*, and *Trials* before such Commissioners may be certified into the Court of Justiciary, who are empowered to proceed in the same Manner, as the Court of *King's Bench* in *England* does in the like Cases: So that, such Trials may, in a great Measure, be said to be *Trials* before the *Justice-court*.

THE second Book is divided into two Sections; *Showing* 1st, The Constitution of the *Circuit-courts*, and their Manner of Procedure before

P R E F A C E.

before the late Statutes of the 20th and 21st of his present Majesty: *And*, 2dly, the Alterations introduced by these Statutes, with the Appeals from inferior Courts to the Circuit-courts, and Procedure therein, together with Tables of the Fees to the Officers in these Courts.

AND, as the Court of Justiciary's Forms, in Criminal Prosecutions, is appointed to be followed by the Sheriffs, Stewarts and other Criminal Judges, where the Trial is to proceed by Jury; I have therefore added, by way of *Appendix* to this Work, (at the particular Desire of his Majesty's Sheriff-deputes, to many of whom I have been singularly obliged), the Form of Procedure before the *Sheriff* and *Stewart Courts*, in *Civil* and *Criminal* Causes, proposed to be observed in these Courts, beginning with the Criminal first, as most coincident with the present Work, to which is subjoined *Tables* of the *Fees* to the several Officers in these Courts, both in Civil and Criminal Causes as regulated by Act of Sederunt of the Court of Session, and by Act of Adjournal of the Court of Justiciary.

FOR the Ease of the Reader, I have noted the Heads of every Paragraph, as also the Authorities referred to, upon the Margin: So that he may have them in his Eye at once.

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THE
FORM of PROCESS
BEFORE
The JUSTICIARY COURT
IN
SCOTLAND.

BOOK I.

SECT. I.

*Concerning the Constitution of the Sovereign
Criminal Court.*

THE Justice-Court of old, was the Supreme Court of the Nation in Causes Criminal, and had then a great Part of that Jurisdiction which the Court of Session have now ^a.

Formerly, the whole Supreme Criminal Jurisdiction, as well as Civil, was lodged in the High Justiciar or Justice-General, appointed by the King; which is of very old standing ^b. The Fees of him and his Clerks having been limited to them in those Times as the established Officers; and indeed in that old Statute referred to,

A

the

The Jurisdiction of the Justice - Court of old.

^a Reg. Maj. l. 1. c. 5. l. 2. p. 74. Quon. Attach. c. 52. 53. l. 3. c. 28.

The antient Jurisdiction of the High Justiciar.

^b Leg. Milc. II. c. 3.

the Justiciar is taken notice of next to the Chancellor.—The Justiciar kept his Courts at *Edinburgh*; and, in Cases of Difficulty, Assessors were appointed to him by the King, and he was to hold two Justice-Airs yearly in each Shire:—And sometimes there were two Justiciars, one on the South-side, and another on the North-side of *Forth* ^c.

^c Stat. Ro. III.
c. 30.

The Jurisdiction of the Justiciar or Justice-General during the old Court of the Lords of Session.

^d Parl. 1487.
c. 105.

^e Spottisf. Records, p. 361.

^f Parl. 1537.
c. 36.

^g Parl. 1587.
c. 84.

But thereafter Matters were reduced to the old Standard; and even while the antient Court of the Lords of Session (which was a Committee of Parliament) subsisted, the Justice or Justiciar was a superior Judge-Ordinary for all Civil Causes, as he is expressly termed in the Statute ^d. By which it appears, that very few Causes were then competent before the Lords of the King's Council, as the antient Lords of Session were then termed; which appears from the Records of their Proceedings ^e.—But, after the Institution of the College of Justice, the Justiciar, or Justice-General, ceased to have Jurisdiction in Civil Causes; which was vested in the Court of Session, then established ^f. But the Justice-General remained still Judge-Ordinary for Criminal Matters: And the Justice-Airs were thus ordered ^g, viz. That the Justice-General should appoint Eight Deputes, or that the King grant Commission to so many as Justice-Deputes; two of whom should be for every Quarter of the Realm:—And there is likewise mention made of a Deputy from the Treasurer, and another from the

the

the Justice-Clerk, who were to be assistant in those Circuit-courts or Aïrs.

The Justice-court had then for its Members, the Justice-General, the Justice-Clerk, the Justice-Deputes, the Clerk-Depute, the Dempster, the Officers, and Macers.

The Justice-General was constitute by a Gift under the Great Seal, either *ad vitam*, or by a temporary Commission, and is called the *Chief Justice* in all the Registers^h, and the *Principal Justiciar*ⁱ. His Commission is recorded in the Books of Adjournal.—This great Officer of Justice sat only in the Justice-court when he thought fit to come, and might go or not to the Circuit as he pleased.

The Justice-Clerk has been, ever since the Regulations 1672, not only one of the Judges, but likewise next in Dignity to the Justice-General as above. But it is certain, that formerly, as he is termed *Clerk*, so truly he was Clerk to the Justiciar, and is expressly so designed in an old Statute^k. And long before that Time, he is named *Justice-Clerk*, and as having the Charge of the Rolls, containing the Names of Persons indicted at the Justice-Aïrs^l: And the Clerk of Justiciary still has his Commission from him, and so is his Deputy. His Business appears, from those and other Acts, to have been, to take up Dittays, *i. e.* to make Inquisition of Persons suspected of Crimes; and thereon to form Indictments

The Members of the Justice-court of old.

The Office of Justice-General.

^h Annis 1637 & 1638.

ⁱ Anno 1503.

Justice-Clerk.

^k Parl. 1493. c. 45.

^l Parl. 1449. c. 28.
P. 1491. c. 45.

4 The FORM of PROCESS

Indictments against these that were to be tried at the Justice-Airs or Circuit-courts. This came to be committed afterwards to the Clerk of Justiciary, properly so termed, when the Justice-Clerk was advanced to be an Officer of the Crown; which must have been before the Regulations of the Justice-court in 1587; for he is mentioned as such in a preceeding Act of the same Parliament ^m.—The Justice-Clerk has his Commission from his Majesty, by a Gift under the Great Seal, sometimes during Life, and sometimes otherwise ⁿ; with Power to him to appoint Deputes, for whom he shall be answerable, and is called in his Gift, recorded in the Books of Adjournal, *Clericus nostri justiciarii*, and before the Union, was one of the Officers of State.

^m Parl. 1537.
c. 31.
His Commission.

ⁿ B. of Adjourn.
4th June 1693.
28th July 1671.

The Justice-Deputes.

The Justice-Deputes were not limited to any definite Number; but usually they were two, and had each of them a Pension from his Majesty, when they were constituted by a Gift from him, which passed the Privy Seal only; and these were called *His Majesty's Justice-Deputes*; and were not Deputes to the Justice-General, for else they could not sit in Judgment with him as they did, and in effect they had an equal Power and Voice with him; and when his Majesty directed any Letter to them, he directed it thus, *To Our Trusty and Well-beloved, Our Justice-General and Justice-Deputes.*—But of old there were Eight Justice-

Justice-Deputes: They had the Privilege of being present at the Privy Council; which was thought very fit, because many Criminal Causes came in before them; and they were called *Attornati Justiciarii*.

This Method continued till the Regulations 1672 were introduced, and the Office of Justice-Deputes was thereby suppressed; and, in place of the Jurisdiction competent to the Justice-General, a new Court was erected, whereof he was to be a Member; and all the Prerogative he had over his Collegues, was to preside in the Court when present; and the Justice-Clerk is made next to him in Dignity.

By these Regulations, the Court of Justiciary is expressly restricted to Criminal Causes: And indeed, in the former Regulations 1587, there is no mention of Civil Causes, as belonging to the Cognizance of the Justice-General or Justice-Deputes, the same having been formerly vested in the Court of Session.

By the foresaid Regulations 1672, in place of the Justice-Deputes, five of the Lords of Session are added to the Justice-General and Justice-Clerk^p. So that the Justice-court has now for its Members, the Justice-General, the Justice-Clerk, the said five Lords of Session, the Clerk-Depute, his Substitute, three Macers, and the Dempster.

Quon. Attach. c. 61.

Justice - Deputes suppressed.

The Court restricted to Criminal Causes.

^p Ch. II. P. 2, c. 18.

The present Members of the Justice-court,

The

The Judges
are constitute
by the King.

The five Lords have each of them a Letter from the Sovereign as their Commission for being Judges, which is recorded in the Books of Adjournal; and generally they continue during Life, are called *Commissioners of Justiciary*, and are invested with an equal Power and Jurisdiction in all Criminal Causes.

The Justice-
Clerk-Depute,

The Justice-Clerk-Depute has a Commission from the Justice-Clerk during Life, and is allowed a Substitute; and, by his Commission, which is recorded in the Books of Adjournal, he has Power to be Clerk in all Courts, "holden by his Majesty's Justice-General, Justice-Clerk, and Commissioners of Justiciary, or any having particular Commission from him, either at *Edinburgh*, or elsewhere."

Writers to the
Signet in use
formerly to
write Criminal
Letters,

^q Ja. V. Parl.
4. Act 34.

It seems, of old the Writers to the Signet did use to write Criminal Letters, without receiving Caution. But now that is discharged^q: And though Writers to the Signet may subscribe the Letters, in Absence of the Clerk, or his Depute; yet the Justice-Clerk-Depute can only write the Deliverance on the Bill, and receive Caution.

The Clerk's
Office.

^r Ja. VI. Parl.
6. Act 78.

The Clerk's chief Business is, to receive from the Raifer of Criminal Letters, or Letters of Recrimination, Caution to report them duly execute and indorsed^r; and from those against whom they are raised, Caution to appear to underly the Law;—from the Pursuer of a Cause advocated to the

the Justices, new Caution to insist; and from the Raifer of the Advocation, new Surety to appear before their Lordships. Such Bonds of Caution are entered in a Book kept for that purpose, and the Clerk is answerable for the Sufficiency of the Sureties.—All Criminal Letters, Diligences, Exculpations, Intimations, Liberations, Lawborrows, Denunciations, Hornings, Captions, &c. that pass under the Seal of the Court, are subscribed by him.—He marks the Sed-runt of the Judges, writes the Depositions of Witnesses, and Deliverances on Bills; records the Information of Parties; writes the Interlocutors and definitive Sentences; records the Verdicts, and minutes any additional Debate that may happen in open Court after the Informations before advising the Relevancy.

The Justice-Court has three Macers, tho' they are not restricted to that Number: They have their Commissions from the Justice-General *ad vitam aut culpam*; which are recorded in the Books of Adjournal, and each of them has a Mace and Gown.—The Mace used by them in the Court, is an iron Rod, ensign'd with an Imperial Crown, which is the Symbol of Power; and besides, it is imbossed below the Crown with the four Badges of the Nation, to wit, *Thistle, Rose, Flower de Luce,* and *Harp*.—The Macer's chief Business is, to execute all Indictments, Criminal Letters, &c. citing Assizers and Witnesses,

The Macers;

Mace.

Their Office.

ses, against and for Pannels, executing Warrants for Imprisonments, waiting on the Judges all the Diets of Court, bringing out and returning Pannels from and to Prison, inclosing Juries, and attending upon them while they are drawing up their Verdict, and repeats after the Clerk all Sentences that are not capital.

The Demp-
ster.

The Dempster of Court, is one who pronounces the Pannel's Doom or Sentence, given by the Lords, read by the Clerk, and repeated by him *in ipsissimis verbis*: He is one whom the Town of *Edinburgh* supplies the Court with; and has his Commission from the Town for that effect recorded in the Books of Adjournal.

Seal.

The Justice-court has a Seal, which is appended to all their Letters and publick Acts, and is kept by the Justice-Clerk-Depute; which Seal bears the Royal Arms.

Records.

The Records of the Court, which are likewise kept by the Clerk, are termed the *Books of Adjournal*.

*Regul. 1672.

The Judges are authorised to regulate the inferior Officers of Court, and order every other Thing concerning it*.—The Court meets each *Monday* at Nine of the Clock in Time of Session, and oftener, if Business so require.

The Justice-
General pre-
sides, and, in
his Absence,
the Justice-
Clerk.

The Justice-General, if present, presides, and, in his Absence, the Justice-Clerk, and, in Absence of both, the Lords elect one of their own Number to preside; four of them being always a *Quorum* in Time
of

of Session, and three in Time of Vacance, except at Circuit-Courts^y.

^y Regul. 1672.

Their Robes.

For the Splendor of the Court, all the Judges sit in red Robes faced with white Sattin; that of the Justice-General's being lined with Ermine for Distinction, and the Justice-Clerk's being distinguished by Outcuttings or Mushings.

The Sovereignty of the Court is so great and conspicuous, that whoever strikes or hurts any Person before them sitting in Judgment, incurs the Pain of Death^z.

Sovereignty of the Court.

^z Ja. VI. Parl. 13. c. 73.

And none dare presume to speak, unless desired, or interrupt, or disturb the Court by Noise, or any other Manner of Way, under the Pain of Imprisonment, and being fined at the Judges Discretion; as also the Lords advise with open Doors in Presence of the Pannel, Affize, and all others.—But in Cases of Rape, Adultery, and the like, the Lords may remove all Persons, except Parties and Procurators, at the leading of the Probation, as they shall see Cause^a;—and further, all the Privileges of that august Court are ratified by special Act of Parliament^b.

Privileges of the Court.

The Court advises with open Doors. Except in cases of Rape, &c.

^a William and Mary, Parl. 1. 1693.

^b Ibid. 1695. The Court has no Vacation.

The Justice-Court hath no stated Terms of sitting, nor any Vacation, except that necessary one, when the Lords go in Circuit.

All the Diets of Court are peremptory; so that if any Indictment or Criminal Summons be not called on the precise Day contained in the Letters, it falls, and a new

The Diets of Court peremptory.

Indictment or Letters must be raised, except the Court adjourn to another certain Day.

One Lord may
adjourn the
Court.

A Quorum of the Lords is necessary to sign a List of Assize, or for judging; but one Lord may adjourn the Court, or continue the Diet of Compearance till another certain Day; may pass Bills for raising Criminal Letters, Letters of Intimation, or Letters of Diligence for citing Criminals, Witnesses, and Affizers, in case of Indictments, or Bills for Letters of Exculpation, Denunciation, &c.

S E C T. II.

Concerning Crimes competent to be pursued before the Justice-court.

THE several Crimes, by our Laws, which may be prosecuted before this Court, are comprehended under the following Division, *viz.*

CAPITAL CRIMES.

Capital
Crimes.

Blasphemy. Char. II. Parl. 1. c. 21. William and Mary. Parl. 1. Sess. 5. cap. 11.

Heresy. Ja. I. Parl. 2. cap. 28.

Atheism, or the denying of a God, &c. Act 11. Sess. 5. Parl. K. William.

Poisoning. Ja. II. Parl. 7. cap. 30. 31.

Fire-raising. Ja. VI. Parl. 1. cap. 33.

Witchcraft. Q. Mary, Par. 9. cap. 73.
Vid. 9th Geo. II. cap. 5. Sess. 2.

Murder.

before the JUSTICIARY COURT. 11

- Murder.* Ja. VI. Parl. 8. cap. 51.
Duelling or Combat. Ja. VI. Parl. 16. cap. 12. K. William, Parl. 1. Sess. 6. cap. 32.
Parricide. Ja. VI. Parl. 14. cap. 220.
Women murdering their own Children. William and Mary, Parl. 1. Sess. 2. cap. 21.
Incest. Ja. VI. Parl. 1. cap. 14. Levit. chap. xviii.
Ravishing of Women. Ja. V. Parl. 7. cap. 118.
Notour Adultery. Q. Mary, Parl. 9. cap. 74. Act 105. Parl. 7. Ja. VI.
Theft. Ja. VI. Parl. 6. cap. 74. Parl. 7. cap. 112. Parl. 11. cap. 83. Parl. 18. cap. 5.
Theft-boot, or Reset of Theft. 21st Act, Parl. 1. Ja. VI.
Sodomy. Levit. chap. xx.
Bestiality. Ibid.
Hamesucken. Reg. Maj. 1. 4. cap. 9. 10.
Forgery and Falshood. Ja. VI. Parl. 23. cap. 22.
Robbery. Ja. II. Parl. 12. cap. 53.
Common Oppression. Ja. VI. Parl. 11. c. 88.
Oppression. Ja. IV. Parl. 4. cap. 42.
Man slaughter. Ja. IV. Parl. 3. cap. 28.
Mutilation, or Demembration premeditate. Ja. IV. Parl. 3. cap. 28.
Beating or Cursing of Parents. Char. II. Parl. 1. Sess. 1. cap. 20.
Egyptians and Masterful Sorners. Ja. VI. Parl. 20. cap. 13.
Slayers,

Slayers, and Houghers of Cattle. Ja. VI.
Parl. 7. cap. 110. Parl. 11. cap. 82.

Among which Crimes are the antient
Pleas of the Crown, viz. Murder, Rob-
bery, Fire-raising, and Ravishing of Wo-
men, to which the Justice-court is only
competent.

CRIMES BAILABLE.

Bailable Crimes. *Comminations and Threatenings.* Ja. VI.
Parl. 7. cap. 117. Vid. Lawbor.

Deforcing Officers of the Law. Ja. VI.
Parl. 7. Act 118. Parl. 11. Act
85. Parl. 12. Act 152.

Breach of Prison.

Forestalling and Regrating. Ja. VI. Parl.
12. cap. 148.

Bearing of unlawful Weapons. Ja. VI. Parl.
16. Act 6.

Hearers and Sayers of Mass. Ja. VI. Parl.
20. cap. 5. Ch. II. Parl. 1. Sess.
1. cap. 8. Q. Anne, Parl. 1. c. 3.
1702. Parl. 1. cap. 2. 1703.

Spuilzies, petty Thefts. Ja. VI. Parl. 6. c. 10.

Forethought Felony. Ja. I. Parl. 3. cap. 5.

Sabbath-breaking. Ch. II. Parl. 1. Sess.
cap. 18.

Cutting and Peeling of green Wood. Ja.
Parl. 2. cap. 33. Ja. V. Parl. 4.
cap. 11. Ja. VI. Parl. 6. cap. 8.

Fishing in forbidden Times. K. William
Parl. 1. Sess. 6. cap. 33.

Breaking of Cruives. Ja. VI. P. 7. c. 11.
Breaking

- VI. *Breaking of Orchards, Parks, and Dikes.*
Ja. VI. Parl. 19. cap. 3. Q. Mary,
Parl. 6. cap. 51.
- Negligence of Officers in their Offices.* Ja. III.
Parl. 5. Act. 26.
- Priests, Jesuits, trafficking Papists, and se-
minary Priests.* Q. Anne, Parl. 1.
cap. 3. 1702.
- Killing of Fowls in Pairing-time, and with-
in Inclosures.* K. William, Act 3.
Sess. 8. and 9.
- Pointing of Oxen in time of Labouring.*
Ja. IV. Parl. 6. cap. 98.
- Perjury.* Q. Mary, Parl. 5. Act 19.
- Bigamy.* Ibid.
- False Witness.* Q. Mary, Parl. 6. cap. 48.
- Usury.* Ja. VI. Parl. 23. cap. 28. Ch. II.
Parl. 1. cap. 62. *in fine.*
- Simony.* Ja. VI. Parl. 21. Act 1.
- Baratry.* Ja. VI. Parl. 1. cap. 2.
- Injuries personal and real, Partiality.* Ja. III.
Parl. 5. Act 26.
- Swearing.* Ch. II. Parl. 1. Sess. 1. c. 19.
Parl. 2. Sess. 3. cap. 22.
- Bribery.* Ja. V. Parl. 7. Act 104. Ja. VI.
Parl. 6. Act 93.
- Drunkenness.* Ja. VI. Parl. 22. cap. 20.
- Disturbers of the Kirk in Time of Divine Ser-
vice.* Q. Mary, Parl. 5. cap. 17.
- Users of False Weights and Measures.* Ja. IV.
Parl. 4. cap. 47.
- Invaders and Troublers of Kirkmen.* Ja. VI.
Parl. 11. cap. 27. Ch. I. Parl. 1.
cap. 7.

Ministers

Ministers neglecting to pray in express Words for the King, Queen, and Royal Family. 10th Annæ, cap. 7. § 11.

Stellionate.

c Mackenzie's
Crim. tit. 28.

Trials for Forgery are carried on before the Court of Session in the first Instance.

The other Crimes to which we have no special Statute relating, or Words adapted to the same, are called *Stellionate*; and may be pursued upon the common Law against *Falshood*, or on the Law to which the Crime has the nearest Affinity.

The Justice-court has the Cognition of all Crimes both capital and arbitrary, unless the Cause admit of Dilators in Matters of Proof; which the Court by its Form does not allow, the Diets thereof being peremptory.—And therefore, in all Improbations, tho' they sustain themselves Judges, they remit the Cognizance thereof to the Lords of Session, who, if there be a *plenary* Proof before them, return the same to the Lords of Justiciary: for tho' the Lords of Session be Judges of the Proof, and pronounce Decreet after a full Debate; yet they can give no Capital Sentence; and their Decreet bears, “The Lords remit the Defendant to the Justices, to be punished *tanquam falsarius*, and to underly the Law criminally;”—and they ordain that Ordinance to be insert in the Books of Adjournal.

How far the Decree of the Lords of Session is Evidence to the Jury.

In a Trial for the Crime of Falshood of Writings, where the Person, found guilty by the Lords of Session, is remitted to the Court of Justiciary, the Jury seems to be at Liberty to consider the Proof led before the

the Lords of Session, and how far they think it sufficient to subject the Prisoner to the Punishment libelled^d.—The Decreet of the Lords of Session is alone laid before the Inquest, as a Proof of the Crime, without leading the Witnesses before them of new, which might be of pernicious Consequence: Nor is this Manner of Procedure, which is authorised by immemorial Usage, contrary to the Statute^e; which ordains, that all the Probation shall be led in Presence of the Assize.—The Decreet of the Court of Session is the only Evidence of Guilt used by the Pursuer, and this is laid before the Jury, which satisfies the Terms of the Statute.

Tho' Falshood of Writings is ordinarily tried before the Court of Session, in the first Instance; yet nothing hinders the whole Trial to be carried on before the Court of Justiciary, where the Proof of the Crime is not intricate; and it is probable, it was the Difficulty in proving the Fact, which often depends on a Variety of Circumstances, that made it cognoscible before the Court of Session, in the first Instance.

The Court of Justiciary empower the Lord Advocate to lay before them this Crime, by way of a Criminal Libel; which is done by indicting the Prisoner in the Terms of the Decreet of Improbation;—the Decreet is libelled in full as to the Crime and Proof, and an Extract thereof lies

^d Anno 1733
Trial of John
Campbell.

^e Ja. VI.
Parl. 11. c. 90.

Trials for Forgery may be carried on before the Justiciary in the first Instance.

Method of Procedure in such Trials upon the Decreet of the Court of Session.

lies in the Clerk's Hand, that the Prisoner may see the same; also a List of forty five Affizers with a Copy of the Indictment and a short Copy by way of Charge, are given to him by a Macer or Messenger, in order for his Compearance before the Lords against a certain Day; and no farther Witnesses or Proof is adduced.—The Day of Compearance being come, the Prisoner is sent for, and enters the Pannal (from this the Prisoner is called *Pannel*): The Lords order the Indictment to be read and, after reading, the Præses asks the Pannel, what he has to say to his Indictment and if he has nothing to say, then the Lords determine the Relevancy of the Libel, and give their Interlocutor thereon finding the Crime, as libelled, *Relevant to infer the Pains of Law*; “and remit the Pannel and Indictment, as found relevant, to the Knowledge of an Affize.”—Then fifteen out of the forty five Affizers are chosen and sworn, and the Lord Advocate for Probation, adduces the Decreet of the Court of Session; which is read in Presence of the Court, Affize, and Pannel. Thereafter the Jury are ordained to inclose and return their Verdict the next Day, and the hail fifteen to be present, under the Pain of One Hundred Merks each.—In obedience thereto, they are inclosed, and chosen a Chancellor and Clerk; and they (all in one Voice, or by Plurality of Voices) find the Indictment *proven*, in Terms of the Decree

Decreet, or *Not*, and give their Verdict accordingly. — The Day following, the Chancellor, accompanied with the Affize, presents their Verdict, sealed and directed to the Lords, who, after reading thereof, give Sentence of Death against the Pannel. It is observed, by a late learned Author, That, when a British Statute, extending to this Country, enacts a Crime, tho' it mentions the same to be triable before the Courts of *Westminster*, without directing where it is to be prosecuted, when committed in *Scotland*, as is sometimes done^f; yet the same is to be tried by the Court of Justiciary, to which are saved all its Powers and Privileges, by the Articles of the Union^g: For, as to all Crimes committed in *Scotland*, the Court of Justiciary regularly remains competent, and consequently such Statutory Crimes, committed here, must be tried before the same, or go unpunished. — Thus, where a Statute in *England*, enacted before the Union, enacted any thing to be done for a Crime, and directed the same to be prosecuted before a certain Court; yet if it did not provide, *That it should not be sued elsewhere*, the other Courts, that would have been competent at common Law, if no such particular Court had been specified, have Jurisdiction likewise in it. — If the Meaning of such Statute were to exclude other Judges than those that are named, there must be Words negative, as, *not in any other Court*, or, *not before any other Judges*^h; and by

A British Statute enacting a Crime to be tried in Westminster-hall; such Crime committed in Scotland, must be tried before the Justiciary.
^f 5th Geo. I. cap. 27.

^g Art. 19.

^h Coke, 2. Inst. 448.

by the same Rule, where a *British* Statute mentions particular Judges for cognoscin in any Crime thereby enacted, without such exclusive Words, the Judges Ordinary, either in *South* or *North Britain* respectively, must be competent to try the same, as the Crime happens to be committed in the one, or the other Part of *Britain*.

The Lord Advocate may prosecute *ob vindictam publicam*, altho' private Parties agree.

ⁱ Ja. VI. P. 11. cap. 76.

His Commission.

The Prosecutor of the several Crimes before the Justice-court, is the Lord Advocate, or his Deputes, who may prosecute all Crimes for the Publick; and altho' the private Parties should agree, he can insist *ob vindictam publicam*ⁱ.—The Lord Advocate has his Commission from his Majesty by a Gift under the Great Seal during Pleasure, with Power to him to appoint Deputes to the Justiciary and Circuit-courts and is recorded in the Books of Adjournal.

S E C T. III.

*Concerning the Manner of apprehending and
sisting Delinquents before the Court.*

Criminals, upon Information, may be apprehended and imprisoned.

THE Persons guilty, or alledged guilty of any of the foresaid capital or bailable Crimes, are, upon Information given in, and signed by his Majesty's Advocate, or his Deputes, or private Parties, to any of the Lords of Justiciary, or other inferior Criminal Judges, ordered to be apprehended

tut ended and imprisoned; and the Warrant
cin granted, is directed "to Macers, Messen-
nou gers, and other Officers of the Law, for
ina apprehending and imprisoning the Per-
re son guilty in the next sure Tolbooth,
th therein to remain, until he be thence li-
mit berate in due Course of Law."—And if
tain the Information be given to any inferior
me judge, the Warrant is directed to their
Ad officers.

rofe That Criminals may be apprehended,
lth and prosecuted, the Freeholders, in their
n in lead Courts, are, by a late Statute^k, im-
Ad powered to assess the County, as they see
esty asonable, to raise a Fund for defraying
Plea the Charges of apprehending Offenders,
De maintaining, and prosecuting them by due
urts ource of Law.—Such Fund is commonly
nal lled *Rogue-money*.

The Style of the Information is as fol-
ws.

nto the Right Honourable, the Lord Justice-
General, or Justice-Clerk, or, in their Ab-
and sence, to any other of the Lords of Justi-
ciary,

the PETITION and INFORMA-
TION of A. B. against C. D.

Humbly sheweth,

THAT where, upon the — Day
of —, and — Year, the said
D. having conceived a deadly Hatred,
Evil-

Freeholders
may assess the
County, for
apprehending
Criminals.
^k 11 Geo. I.
cap. 26.

Style of the
Information.

Evil-will and Malice against *E. F.* did lie in wait for him, betwixt — and — in the County of —, and Parish of — and has actually murdered him, with some mortal Weapon, such as Durk or Poynard whereof he instantly died; and the said *C. D.* having made his Escape, is said to be lurking and absconding himself, in the Shire of —, or some Place thereabout on purpose to shelter himself from Justice

May it therefore please your Lordship, grant Warrant to all Officers of the Law for searching, seeking and apprehending the Person of the said C. D. and imprisoning him in sure Ward and Firman until he be tried for the above Crime.

A.

The Form of the WARRANT on the above Information, is as follows.

By the Right Honourable, the Lord Justice General, or Justice-Clerk, or any other the Lords.

Form of the
Warrant
thereon.

“Whereas, by an Information given
“to me, subscribed by *A. B. C. D.*
“accused as guilty of the Murder of *E.*
“by lying in wait for him, upon the —
“Day of —, and — Year, in the
“County of —, and Parish of —
“and has actually murdered him, with
“some mortal Weapon, such as Durk
“Poynard

Poynard, whereof he instantly died ;
 and the said *C. D.* having made his E-
 scape, thereupon Warrant is craved to the
 Effect after mentioned : These, there-
 fore, command and ordain Sheriffs of
 Shires, Stewards of Stewartries, and
 their Deputes, Magistrates of Burghs
 Royal, within their respective Jurisdicti-
 ons, Macers of the Court of Justiciary,
 Messengers at Arms, and Constables, to
 search for, seize and apprehend the Per-
 son of the said *C. D.* and commit him
 Prisoner, in the next sure Tolbooth,
 therein to remain, until he be thence li-
 berate in due Course of Law : For do-
 ing whereof, this shall be to them, and
 all concerned, a sufficient Warrant. —
 Given at — the — Day of —,
 and — Year.

C. A.”

The Person being apprehended, and put
 in Prison for a Capital Crime, may be com-
 mitted close Prisoner, for eight Days ;—but
 no Person accused of any capital Offence,
 or other Crime, in *Scotland*, is liable to
 Torture !.

None liable to
 Torture.

¹ 7mo Annæ,
 cap. 21.

Before the Criminal is apprehended or
 imprisoned, his Accusers may apply to the
 Lord Advocate, or his Deputes, or any in-
 ferior Judge, and take a Precognition of
 the Way and Manner the Crime was com-
 mitted, upon the Faith and Candour of
 these who best knew the same, and were
 present

Precognition
 may be taken.

present at the committing of the Crime which is only a candid Account of what they know in the Matter ; and may be obliged to declare upon Oath, (if the Judge Taker of the Precognition, find it necessary), and is the Standard for the Lord Advocate, his Deputes, or private Party, to draw the Indictment or Criminal Letters by ; besides what other Evidence can be had in relation to the Crime.

Precognition
when to be
taken.

Precognition is frequently taken of the Facts before Criminal Letters are given out, to prevent calumnious Accusations ; and sometimes a signed Information touching the Facts, without any previous Inquiry, founds such Prosecutions.—In Cases of High Treason, it was specially provided by Statute, That he, who accused another of Treason, of which he was acquitted, should incur the Pains of Treason, whereof he had accused the other ^m.—In other Crimes, it is ordained by our Law, That the Court allow Expences to the Parties accused, who are either acquitted, or passed from ⁿ.

^m Parl. 1587.
cap. 49.

ⁿ Quon. Attach. cap. 31.
61. Reg. Maj.
l. 4. c. 21.

Trial by Combat of old.

^o Reg. Maj.
lex. 4. cap. 2.
Quon. Attach.
cap. 31.

^p Stat. Alex. II.
5. 6.
^s Aff. Dav. 28.

Of old, the Party accused had his Election, whether to vindicate himself, by singular Combat, or be tried by an Inquest ^o : —But some were exempted from fighting, as aged Persons, religious Men, Clerks and Women ^p, and likewise, such as were landed Men : All those might combat by another, called a *Champion* ^q ; but such as declined Battle, behoved to cleanse themselves, by the Judgment of God, (as it was called),

called), viz. their holding hot Iron in their hands, or drinking boiling Water, without complaining of any Pain^r.—In Criminal Cases, the Party, who was overcome, is obliged to suffer Punishment, as if he had been convicted of the Crime, if the Defender; and, if it was the Accuser, he was subject to the same Punishment that the other must have undergone, if he had been convicted:—All which went into Desuetude, many Ages since.

In case a Crime be committed within the Verge, of any inferior Jurisdiction, such as Royal Burghs, Sherifffdoms, Stewtries, &c. who have no Inclination to proceed against the Delinquent, they may imprison, and detain his Person, take Recognition of the Crime, and transmit the same to the Lord Advocate, or his Deputes, who will obtain Warrant, from the Lord Justice-General, Justice-Clerk, or any other Lord in their Absence, directed to the Magistrate of the Burgh, where the Prisoner is confined, for delivering up the Criminal's Person, in order to be transported, from County to County, by the Sheriffs thereof, (to whom the Warrant is likewise directed), till he arrive at the Prison of Edinburgh.—And every Sheriff, or Fisk of Court, to whom the Execution of the Warrant is committed, orders a Party, attended by the common Officers of the County, for the Prisoner's safe Transportation, as directed by the Warrant, and gives

^r Reg. Maj.
lex. 4. c. 2.

Inferior Judges who do not incline to prosecute Criminals must transport them to Edinburgh.

Method of such Transportation.

gives Receipt to the Fisk of the County he receives him from; and so on, until his Arrival in *Edinburgh Prison*, where likewise Receipt of the Prisoner is got from the Keeper thereof.

But if they incline to prosecute the Criminal, they proceed in the same manner as the Court of Justiciary do.

But, in case such Jurisdictions incline to prosecute their own Criminals, in virtue of their Privileges, they judge them, and bring them to condign Punishment, upon the legal Proofs, as the Law directs, and in their Procedure, make the Sovereign Court of Justiciary's Method in Trial their *regula regulans*.

S E C T. IV.

Concerning the Method and Form of advocating Criminal Actions from before inferior Judges to the Court of Justiciary, and suspending these Judges Sentences.

The Court of Justiciary advocate Causes from inferior Judges.

* Mackenzie's
Crim. tit. 17.
Advocations.

THE Lords of Justiciary are in use to advocate Causes from all inferior Criminal Judges, in Cases of Incompetency, Iniquity and Intricacy, as being the Head and Sovereign Court in judging Crimes. Tho', of old, the Lords of Session were look'd upon to be competent Judges for that Effect^r; yet the Lords of Justiciary, being now of their Number, are the proper Judges:—And, both by the old and new Style of these Advocations, the

were

ere raised, either by the Council, or Criminal-court.—The Letters bear, “ That the Reasons are to be seen, and considered by the Justices;—and, immediately upon the Advocation’s passing, Caution is found in the Books of Adjournal, to answer before the Justices;—and they have been in the constant Use of judging such seasons of Advocation.

The Style of the LETTERS of ADVOCATION is as follows:

GEORGE, by the Grace of God, King of Great Britain, France, and Ireland, Defender of the Faith, to our Lovites, Macers, Messengers at Arms, our Sheriffs in that Part, conjunctly and severally, specially constitute, Greeting: FORASMUCH as it is humbly meant and shown to Us, by Our Lovit, C. D. That where the said Complainer is indicted and accused before the Sheriff of——, and his Deputes, at the Instance of A. B. Procurator Fiscal of the Sheriff-court, for his alledged having, upon the——Day of——last past, by himself and others his Accomlices, theftuously taken away and stolen considerable Quantities of——belonging to——, at least, as being guilty of Receipt of Theft, Accessory, and Art and Part in the said Crime: Which being found proven, the said Indictment concludes, that the Complainer should be punished with the Pains of Law. As a Double of

D

the

Form of Letters of Advocation.

the said Indictment, containing a List of Witnesses and Affizers Names and Designations, with a Copy of Citation subscribed by one of the Officers of Court, produced, bears. In the which Trial and Indictment, the said Sheriff and his Deputes intend to proceed, albeit he be most suspect of Iniquity, and no ways Judge competent to the said Action, for the Reasons and Causes following, (*Here the Reasons of Advocation are insert, and then follows.*) Nevertheless, to convince our said Lords of the Complainer's Innocency, he has already found sufficient Caution and Soverty acted in Our Books of Adjournal, to compear and abide his Trial before Our said Lords.— And therefore the said Action ought to be advocate to our said Lords, as the only unsuspect Judges thereto, for the Reasons and Causes foresaid. OUR WILL IS HEREFOR, and we charge you strictly and command, That, incontinent thir Our Letters seen, ye pass, and, in Our Name and Authority, command and charge the said Sheriff of—, and his Deputes, Procurator-Fiscal and Clerk of Court, to compear before Our said Lords, Justice-General, Justice-Clerk and Commissioners of Justiciary, within the Tolbooth or Criminal-court of the House of *Edinburgh*, the——Day of—— next to come, bringing with them the principal pretended Libel or Indictment, if any be raised, List of Witnesses and Affizers, haill Acts and Minutes of Process.

so far as they have proceeded therein, to be seen and considered by Our said Lords, and to hear and see the same advocate, and themselves and all other inferior Judges discharged from any further trying, meddling, judging or cognoscing in the said Cause: **ATTOUR**, We and Our said Lords, Justice-General, Justice-Clerk, and Commissioners of Justiciary have advocated, and hereby advocate the foresaid Action and Cause, from the said Sheriff and his Deputes, Procurator Fiscal and Clerk of Court, to the said Lords themselves, discharging hereby the said Sheriff and his Deputes from all further meddling, trying, judging or cognoscing therein, and of their Offices in that Part, in the mean time, while the said Day. **AND SICKLIKE**, That ye, in Our Name and Authority, command and charge the Provost and Bailies of the Burgh of——, to set the Complainer at Liberty, in respect he has found sufficient Caution, acted in our Books of Adjournal, for his Compearance as said is *. —**ACCORDING TO JUSTICE**, (Because——is become Cautioner for the Complainer's Compearance, Day and Place, to the Effect, and under the Pains contained in the Acts of Parliament) as ye will answer to us thereupon: The which to do, we commit

* And in case the Crime to be advocate is capital, then the Lords will not ordain the Prisoner to be liberated, but transported under a sure Guard; and the Letters will contain a Warrant for that Effect.

mit to you, conjunctly and severally, our full Power by these our Letters, delivering them by you duly execute and indorsed again to the Bearer. Given under our Signet at *Edinburgh*, the——Day of——, and of our Reign, the——Year 17——.

Ex deliberatione Dominorum Commissionariorum Justiciarum.

J. D. Clerk

Pass only on a Bill.

To be execute by a Macer or Messenger.

† Mack. Crim. tit. 17. § 5.

If no Compearance, the Diet will be deserted.

These Letters pass upon a Bill signed by three Lords in Time of Vacance, and four in Time of Session.—Before they are taken out, there is Caution found in the Books of Adjournal, for the Complainer's Compearance before their Lordships against a certain Day.—This Advocation must be execute by a Macer or Messenger, and a full Copy of the Letters given to the Procurator-Fiscal, or private Party, Judge and Clerk, otherwise it will not be sustained.—So soon as the Advocation is presented to the inferior Court, the Judge ceases from determining any further therein, except the Cause be remitted back to him again.

Before the Day of Compearance, the Letters of Advocation, and Executions, are given in to the Clerk of Court; and if no Person appear to prosecute the Cause, when the Letters are called, (which is always on the Day of Compearance), then the Lord desert the Diet *simpliciter*, and dismiss the Party from the Bar; whereupon he takes Instruments; And the Clerk writes the

Interlo

Interlocutor deserting the Diet on the Back of the Advocation ; which is signed by the Preses.

But, in case the Prosecutor compear, the Raifer of the Advocation, so soon as the Letters are called, enters the Pannal, and the Preses desires the Clerk to read the Letters ; which being done, the Lawyers proceed to debate the Reasons of Advocation ; and, after the Debate is ended, then the Lords ordain both Parties to give in Informations to the Clerk, in order to be recorded.

This was the Method by the Regulations 1672 ; and was always observed till the late Act^u, which allows the Court to dispense with Informations upon the Relevancy, when they see Cause, and likewise to appoint Informations to be given in, in every Step of the Trial where Difficulty occurs.

After the Informations are recorded, the Lords proceed to determine the Relevancy, either advocating the Cause *in jure*, or remitting the same back to the Judge, with Instructions :— But if the Lords advocate *in jure*, then they ordain the Defender in the Advocation, to prosecute the Action *de novo*, and raise Criminal Letters against the Advocater, at any time within the Space of Six Months thereafter ; —and the Complainer is obliged to find Caution, to answer to any Libel that shall be raised against him, within the foresaid Space, under the Pains contained in the Acts of Parliament,

But if Compearance, the Court proceed to discuss the Reasons, or appoint Informations to be given in.

The Court may now dispense with Informations.

^u 20th Geo.II.

The Procedure upon the Advocation.

^w Ja. VI. P. 6.
c. 78. Ja. VI.
P. 13. c. 166.

^x Tit. 7.

New Reasons
cannot be
eiked.

^y Mack. Crim.
tit. 17. § 7.

The Court
may review
the Sentences
of inferior
Judges.

^z 3d Geo. II.
c. 32.

The Method
of repledging
from the Ju-
stice-court of
old.

liament^w, if the Crime isailable;—but in case the Crime is capital, there is a Warrant granted for detaining him in Prison until he be liberate in due Course of Law and the Pursuer is ordained to prosecute him with all convenient Diligence;—and in case of Delay, the Prisoner may apply for Letters of Intimation, and force his Trial, as I have observed elsewhere^x.

The Raifer of an Advocation of a Criminal Cause from an inferior Judge, will not be allowed to eik new Reasons at calling the Advocation, as in Civil Cases; the Diet being peremptory:—And all Reasons of Advocation must be proved *instantanter*^y.

This Court may likewise review, by Suspension, the Sentences of inferior Criminal Judges, so far as they are not sufficiently founded or supported by the Verdict, &c. and may sist Execution of their Sentences for thirty Days, in terms of the Statute^z. —The Form of these Suspensions are similar to those in Civil Cases before the Court of Session; with this Difference, that, where the Sentence inflicts a corporal Punishment, the Party must remain in Prison, till the Reasons of Suspension are discussed.

Of old, if the Criminal, whose Action the Lords had advocated to themselves, did dwell within the Lord of Regality's Jurisdiction the Time of committing the Crime, he, or his Depute, if they incline, might compear before the Lords,

and crave the Criminal to be repledged; or a Lord or Bailie of Regality might, in the Case of Crimes falling under his Cognizance, repledge, from this Court, an Offender dwelling within the Regality, in all Cases, except Treason; and the Pleas of the Crown^a; that is, might crave him to be remitted to be judged in his Court, upon caution of *Culrach*, found by the Repledger to do Justice within Year and Day, and by the Person repledged, to appear there, to underly the Law for the Crime laid to his Charge^b: In which Case, the Repledger, if he failed to do Justice upon him, in due time, tined his Court for Year and Day; the Surety, who borrowed the Criminal, was liable in an Unlaw or Attornement; and the Lords of Justiciary (out of whose Hands he was taken) might proceed to try him^c:—But seldom or never the Court allowed any Lord or Bailie of Regality to repledge from them, except the Duke of *Argyll*;—or in case the Justices was prevented by Citation.—Indeed, at the Circuit Courts, the Judges did indulge the Lords and Bailies of Regalities to sit with them; but seldom to repledge:—And Criminals dwelling within any of the Isles of *Scotland* (except *Orkney* and *Zetland*, and a part of the Isle of *Arran*) were, upon Application made in the name of the Duke of *Argyll*, who was Hereditary Justice-General in those Parts, remitted to be tried by his Grace and his Deputes.

^a Ja. VI. P. 11.
Act 29.

^b Skeen verb.
fig. (*Culrach*.)

^c Quon. Attach. cap. 1.
and 17.

But,

^d 20th Geo. II.

By the Abolition of the heritable Jurisdictions, the Right of repledging is taken away.

^e Anno 1628.

But, by the late Act^d, these eminent Jurisdictions are taken away, and a Consideration therefore given to the respective Proprietors.—And altho' the Office of Justiciary or Justice-General over the whole Kingdom was made hereditary in the Family of *Argyll*, and was, previous to the Regulations 1672, resigned to the Crown, with a Reservation of the same over the Shire of *Argyll* and Western Isles^e; yet his Grace the present Duke, did not oppose the Bill for taking away that remaining high Jurisdiction, together with the other eminent heritable Jurisdictions in *Scotland*, in the Terms mentioned in the Statute; the public Good being concerned in abrogating all such Jurisdictions: Wherefore, at present the Court of Justiciary's Jurisdiction extends over the whole Kingdom; and the Circuits are held for the Shire of *Argyll*, as well as for the other Counties in *Scotland*, which, before that Statute, was not the Case.

S E C T. V.

The Manner of Procedure against Capital Offenders, upon their Confession in Judgment, with the whole Form relating thereto

HIS Majesty's Advocate, or his Deputes, prepares an Indictment against the Person accused of Murder, or any

any other capital Crime, in the Form following. —

INDICTMENT.

C. D. you are indicted and accused, at the Instance of *A. B.* with Concourse of *D. F.* his Majesty's Advocate, for his Highness's Interest, of the Crimes after mentioned. THAT WHERE, by the Laws of God, and of this and every well governed Realm and Society, the Crimes of Murder are severely punishable, with all the aggravations thereof and Tendencies thereunto, particularly by Act of Parliament: —

LET true it is and of Verity, That you the said *C. D.* shaking off all Fear of God, and Regard to the Laws, are guilty Actor thereto and part, of the foresaid Crime; IN so FAR AS you, of yourself, or with and by your accomplices, did masterfully, out of a murdering Design, and from a propense and premeditate Malice, lie in wait, upon the — Day of —, and — Year, betwixt — and —, in the Parish of —, and County of —, at the place called —, or near by that Place, and then and there, betwixt the Hours of — and —; in the Night-time of the said Day, or upon one or other of the Days of the said Month and Year, or upon one or other of the Hours of the said Night or Nights, of the said Day or Days, feloniously attack the Person of *E. F.* without

E any

Form of an
Indictment.

any Manner of Provocation, and that as he was coming Home to his own House, Family or Place of Residence; and then and there, or near by the said Place, you, or yourself, or said Accomplices, did murder the said *E. F.* with a Durk, Poynard, or some other mortal Weapon, by thrusting the same below his left Pap, opposite to his Heart, whereof he instantly died: And thereafter most inhumanly and barbarously did drag him to a Pond near by, where you, of yourself, or said Accomplices, threw the said *E. F.* in, on purpose to conceal your cruel and wicked Murder; and when missed, and Search made, he was found there dead. Which, or any Part thereof, or your being guilty Actor and part of the said Crime, being found proven by the Verdict of an Assize, before the Lords Justice-General, Justice-Clerk, and Commissioners of Justiciary, you ought to be punished with the Pains of Law, to the Example and Terror of others from committing the like in Time coming.

D.

Witnesses Names and Designations that are to be adduced against you.

A. B. Merchant in *G. H.* Merchant
 Edinburgh. *Edinburgh.*

C. D. Merch^t there. *H. I.* Merch^t there

D.

In all capital Crimes, the Facts are to be libelled, with the Hour, Day, Month, or the one or other of the Days of the Month, Year of God, and Place in which the Fact happened, or as guilty Actor art and part of the same, as in the above Form of Indictment: And sometimes particular Facts and Circumstances are libelled, for presuming and inferring the Guilt.— If the crime be contrary to any statutory Law, the Statute must be libelled; and all Indictments may conclude with *the Pains of*

Facts must be particularly libelled.

The Indictment, with the List of Witnesses subjoined thereto, for proving the crime, is made up by his Majesty's Advocate, or his Deputes.— If there is any private Party, the Indictment must make mention thereof; and the same, with the List of Witnesses, is signed by the Lord Advocate, or his Depute, and thereafter taken in to the Clerk of Court, in order to prepare a Bill for Letters of Diligence, passing their own Signet, for the Prisoner's appearance before the Court against a certain Day, in order for his Trial; as also, citing Witnesses and Affizers to the

Indictments are framed by the Lord Advocate.

These Letters pass upon a Bill, signed by the Lord Advocate, who names the Day of Appearance; and the Deliverance on the Bill is, *Fiat ut petitur, to the — Day — next to come*; which is signed by the Lords and the Clerk.— There is also

The Bill for Letters of Diligence.

In what Case
the half of the
Jury is to be
Landed Men.

A full Copy of
the Indictment
must be given
to the Prisoner.

f Regul. 1672,
art. 11.

Diligence for
citing the Pan-
nel, Witnesses,
and Affizers.

also at the same time a List of Affizers consisting of forty five Persons, presented and signed by four Lords in Time of Session, and three in Time of Vacance, who must also be summoned on this Diligence.

If the Person guilty be a Gentleman holding of the Crown, the one half of the forty five Affizers must be Landed Men.

Persons indicted for capital Crimes, must have a full Copy of the Indictment, with a List of the Witnesses and Affizers Names and Designations, fifteen free Days before the Day to which they shall be summoned to appear to stand Trial^f. — This is called, in Terms of Law, the *induciæ legales*.

Follows the Form of the Diligence for citing the Prisoner, Witnesses, and Affizers.

GEORGE, by the Grace of God, King of Great Britain, France, and Ireland, Defender of the Faith: To Our Lovits, Macers, Messengers at Arms, Our Sheriffs in that Part conjunctly and severally, specially constituted, greeting. FORASMUCH as it is humbly meaned and shown to Us, by Our Trusty D. F. Esq; Our Advocate for Our Interest, and A. B. Merchant in — THAT where, the — Day of — next to come, is appointed for the Trial and examination of C. D. Prisoner in the Tribunal of Edinburgh, for the Crime of M

der committed by him, in manner mentioned in the Indictment raised against him thereanent: Therefore, necessary it is for the Complainers to have our Warrant and Diligence for summoning the said *C. D.* to compear before Our Lords Justice-General, Justice-Clerk, and Commissioners of Justiciary, within the Tolbooth or Criminal-court House of *Edinburgh*, the said — Day of — next to come in the Hour of Cause, there to underly the Law for the Crime foresaid, and also for citing Witnesses and Affizers in manner underwritten. OUR WILL IS HEREFOR, and we charge you strictly and command, that incontinent, thir our Letters seen, ye pass, and, in Our Name and Authority, summon, warn and charge the said *C. D.* to compear before Our said Lords Justice-General, Justice-Clerk, and Commissioners of Justiciary, within the Tolbooth or Criminal-court House of *Edinburgh*, the — Day of — next to come, in the Hour of Cause, there to underly the Law for the Crime foresaid, that being convict thereof, Justice may be administred upon him, conform to the Laws of this Realm: And also, that ye summon an Affize hereto not exceeding the Number of forty five Persons, together with such Witnesses who best know the Verity of the Premises, whose Names shall be given you in List subscribed by the said Complainers, or any of them, to compear before our said Lords, Day and Place

Place foresaid, the said Persons of Inquest to pass upon his Affize, and the said Witnesses to bear leal and sooth-fast witnessing in so far as they know or shall be asked at them anent the said *C. D.* his Guiltiness of the Crimes foresaid, each Assizer and Witness, under the Pain of 100 Merks. ACCORDING TO JUSTICE, as ye will answer to us thereupon: The which to do, we commit to you, conjunctly and severally, our full Power by these our Letters, delivering them by you duly execute and indorsed again to the Bearer. Given under our Signet at *Edinburgh*, the——Day of——, and of our Reign the——Year 17——.

Ex deliberatione Dominorum Commissionariorum Justiciarum,

J. D. Clerk,

These Letters are signet with the Seal of Court.

Follows the Form of the Copy given to the Prisoner.

Copy to the
Prisoner.

I *J. G. Macer* to the Justiciary-court, by virtue of Letters of Diligence raised at the Instance of *A. B.* with Concourse of *D. F.* his Majesty's Advocate for his Highness's Interest, against *C. D.* Prisoner in the Tolbooth of *Edinburgh*, in his Majesty's Name and Authority, summon, warn and charge you, the said *C. D.* to compear before the Lords Justice-General, Justice-Clerk, and Commissioners of Justiciary, within

within the Tolbooth, or Criminal-court House of *Edinburgh*, the——Day of—— next to come, in the Hour of Cause, there to underly the Law, for the Crime of Murder committed by you, in Manner mentioned in the Indictment raised against you thereanent; to the effect that, being convict thereof, Justice may be administered against you, conform to the Laws of this Realm. This I do, conform to the principal Letters of Diligence which are dated and signet at *Edinburgh*, the——Day of——, and——Year. Of the which principal Indictment, with a List of the Assizers Names and Designations, that are to pass upon your Assize, and a List of the Witnesses Names and Designations that are to be adduced against you, I herewith give you a just and exact Copy, upon this——Day of——, and——Year. Before these Witnesses, &c. &c.

Ex deliberatione Dominorum Commissionariorum Justiciarum. J. G. Macer.

Follows the Form of the Execution returned against the Prisoner.

UPon the——Day of——, and——Year, I J. G. Macer of the Justiciary-court, passed at Command of Letters of Diligence raised at the Instance of *A. B.*, with Concourse of *D. F.* his Majesty's Advocate for his Highness's Interest, against *C. D.* Prisoner in the Tolbooth of *Edinburgh*.
And,

Execution against the Prisoner.

And, by virtue thereof, in his Majesty's Name and Authority, summoned, warned and charged the said C. D. to compear before the Lords Justice-General, Justice-Clerk, and Commissioners of Justiciary, within the Tolbooth or Criminal-court House of *Edinburgh*, the — Day of — next to come, in the Hour of Cause, there to underly the Law for the Crime of Murder committed by him, in manner mentioned in his Indictment raised against him thereanent; to the effect that, being convicted thereof, Justice might be administered upon him, conform to the Laws of this Realm. This I did after the Tenor of the said Letters of Diligence in all Points; which are dated and signet at *Edinburgh*, the — Day of —, by delivering to the said C. D. personally apprehended within the said Tolbooth, a full Double of the said Indictment, with a List of the Affizers Names and Designations, that are to pass upon his Affize, and a List of the Witnesses Names and Designations, that are to be adduced against him, with a short Copy subjoined thereto, subscribed by me; which Copy did contain the Day and Date hereof, Witnesses Names and Designations therein insert, present thereat, and hereto subscribing, *viz.* — and —. And, for the more Verification hereof, I and the said Witnesses have subscribed the same.

J. G. Macera

D. E. Witness.

A. F. Witness.

Follows

Follows the Form of the Copy given to each of the Witnesses in the Indictment.

J. G. Macer to the Justiciary-court, by
 virtue of Letters of Diligence raised at
 the Instance of *A. B.* with Concourse of
D. F. his Majesty's Advocate for his High-
 ness's Interest, against *C. D.* Prisoner in the
 Tolbooth of *Edinburgh*, in his Majesty's
 Name and Authority, summon, warn and
 charge you — to compear before the
 Lords Justice-General, Justice-Clerk and
 Commissioners of Justiciary, within the Tol-
 booth or Criminal Court-house of *Edin-*
burgh, the — Day of — next to
 come, in the Hour of Cause, to bear leal
 and sooth-fast witnessing, in so far as you
 know, or shall be speared at you, anent the
 said *C. D.* his Guiltiness of the Crime li-
 belled against him, under the Pain of 100
 Merks. This I give you, upon this —
 Day of —, and — Year, before
 these Witnesses —, —and —.

Form of the Citation to the Witnesses.

*Ex deliberatione Dominorum Commissiona-
riorum Iustitiarum.*

J. G. Macer.

follows the Execution upon summoning the Witnesses.

UPon the—Day of—, and—
Year, I J. G. Macer to the Justiciary-
Court, passed at Command of Letters of Di-
F Intelligence

Execution a- gainst Wit- nesses.

ligence raised at the Instance of *A. B.* with
 Concourse of *D. F.* his Majesty's Advocate,
 for his Highness's Interest, against
C. D. Prisoner in the Tolbooth of *Edin-
 burgh*; and, by virtue thereof, in his Ma-
 jesty's Name and Authority, summoned
 warned, and charged — and — to com-
 pear before the Lords Justice-General, Ju-
 stice-Clerk and Commissioners of Justice
 ary, within the Tolbooth, or Criminal
 Court-house of *Edinburgh*, the — Day
 — next to come, in the Hour of Cause
 to bear leal and sooth-fast witnessing, in
 far as they know, or shall be speared at them
 anent the said *C. D.* his Guiltiness
 the Crime libelled, ilk one of the said
 Witnesses, under the Pain of One hundred
 Merks: This I did conform to the said
 Letters of Diligence, in all Points, which
 are dated and signet at *Edinburgh*, the
 — Day of —, and Year foresaid, by
 delivering to the said — and —,
 short Copy subscribed by me (all personally
 apprehended), and by leaving to the
 said — and —, a short Copy
 subscribed by me, within each of the
 dwelling Houses, with their Wives or Ser-
 vants, because I could not get them per-
 sonally apprehended. All which Copies
 did contain the Days and Date hereof
 Witnesses Names and Designations thereof
 insert, present thereat, and hereto subscri-
 bing, before these Witnesses — and —
 and, for the more Verification hereof,

and the said Witnesses have subscribed the same.

J. G. Macer.

A. M. Witness.

C. L. Witness.

Follows the Form of the Copy given to an Assizer.

J. G. Macer to the Justiciary-court, summon you ——— to compare before the Lords Justice-General, Justice-Clerk and Commissioners of Justiciary, within the Tolbooth or Criminal Court-house of *Edinburgh*, the — Day of ——— next to come, in the Hour of Cause, to pass upon the Affize of C. D. Prisoner in the Tolbooth of *Edinburgh*, under the Pain of One hundred Merks. This I give you upon the — Day of — and — Year.

J. G. Macer.

Form of Citation to Assizers.

The Macer returns an Execution after this Manner.

UPON the — Day of — and — Year, We, Macers to the Court of Justiciary, summoned, warned and charged the Persons after mentioned, to compare before the Lords Justice-General, Justice-Clerk and Commissioners of Justiciary, within the Tolbooth or Criminal Court-house of *Edinburgh*, the — Day of —, next to come, in the Hour of Cause, to pass

Execution against Assizers.

pass upon the Affize of *C. D.* Prisoner in the Tolbooth of *Edinburgh*, each under the Pain of 100 Merks, *viz.*

Personally apprehended, *viz.*

G. H. Bookseller in *Edinburgh*

J. D. Bookseller there

J. C. Wright there

W. B. Bookseller there

D. D. Merchant there

J. L. Smith there

J. G. Wright there

D. C. Merchant there

W. D. Merchant there

A. D. Merchant there

W. B. Merchant there

A. B. Baxter there

W. C. Merchant there

W. G. Wright there

W. C. Vintner there

G. W. Glasier there

G. C. Lister there

F. G. Merchant there

W. K. Baxter there

P. R. Merchant there

W. G. Smith there

J. C. Vintner there

J. M. Weaver there

Copies left at their dwelling Houses, *viz.*

H. C. Merchant in *Edinburgh*

W. M. Coppersmith there

W. L. Coppersmith there

N. L. Merchant there

L. M. Goldsmith there

J. J. Jeweler there

J. A. Merchant there

J. P. Bookseller there

G. C. Merchant there

J. W. Wright there

J. W. Vintner there

A. H. Merchant there

R. B. Vintner there

G. H. Wright there

D. F. Merchant there

W. H. Baxter there

A. J. Merchant there

G. B. Smith there

G. G. Merchant there.

H. C. Coppersmith there

A. A. Pewtherer there

W. W. Merchant there

J. G. }
H. C. } Macers.
J. P. }

Diligence and Executions &c. must be lodged with the Clerk 24 hours before Calling.

Before the Day of Compearance, the Lord Advocate, or his Depute, give in the Indictment with the Diligence and Executions thereof, against the Pannel, Witnesses and Affizers, to the Clerk of Court that the Prisoner's Doer may have an Opportunity of seeing the same:—And all Indictments, with the Executions, &c. ought to be lodged twenty four Hours at least before Calling.

If the Prisoner is poor, and not in condition to advise Lawyers, or, if this be suspected by the Judges, they cause notify to him, to apply to them, by Petition, for Lawyers to make his Defence, either before or at his Compearance.—And, if the Prisoner, by himself, or upon such Notification, make Application, the Court will appoint Council one or more who are served with a Double of the Petition and Interlocutor, as their Warrant.—This Petition regularly ought to be given in some few Days before the Day of Compearance, that his Lawyers may have Time to consider the Indictment: But, if the Prisoner, through Ignorance, come unprepared of Lawyers, the Lords, *ex nobili officio*, will ordain one or more to appear for him:—As also *gratis* Warrants are granted to Prisoners, That Clerks, Macers and others, may serve without Fee or Reward.

The Prisoner may petition the Court for Lawyers.

Upon the Day of Compearance, before the Court meet, the Affizers are called by the Clerk, and such as are present marked, in order that the Absents may be known.

Affizers called, &c.

The Prisoner is sent for by a Macer of Court in his Gown, displaying his Mace, and brought into the Court-house before the Lords come to the Bench, and put into the Pannal.

The Clerk of Court, when the Lords come to the Bench, writes in the Book the Sederunt of the Judges present, viz.

Curia

Sederunt.

*Curia Justiciarum S. D. N. Regis, tenta
prætorio burgi de Edinburgo—, de
mensis —, anno Domini —, po
nobilem et potentem Comitem—, Ju
sticiarium Generalem, et Honorabiles Vi
ros—, Justiciarium Clericum, Do
minos — Commissionarios Justici
arii dict. S. D. N. Regis.*

Curia legitime affirmata,

Thereafter the Clerk writes in the Book thus
Intran.

That is, *The Prisoner enters the Pannal
C. D. indicted and accused at the Instance
of A. B. with Concourse of D. F. his Ma
jesty's Advocate for his Highness's Interest
as guilty of the Crime of Murder committed
by him, in Manner mentioned in his Indict
ment raised against him thereanent.*

Indictment
read.

The Macer, by Order of Court, com
mands Silence, and the Preses orders the
Pannel's Indictment to be read. — After
Reading, the Preses asks the Pannel what
he has to say to his Indictment. — If he
confess, then his Confession is immediately
wrote on the Back of the Indictment, and
signed by him and the Preses, in Presence
of the Assize, in the Tenor following.

Edinburgh the — Day of—, and — Years.

The Pannel's
Confession.

“ In Presence of the Lords Justice-Ge
“ neral, Justice-Clerk, and Commission-
“ ers

ers of Justiciary and Affizers sitting in Judgment, compeared C. D. Pannel, and judicially acknowledged and confessed, that he is guilty of the Crime as libelled, in the within Indictment.

C. D.

A. C. I. P. D.

But, in case the Pannel, at the Time of his judicial Confession, appear to be any ways distracted or disordered in his Judgment, whereby he may prejudice himself in his Life and Fortune; the hail Accusation, Reasoning, Writs, Witnesses, and other Probation and Instruction whatsoever of the Crime, must be alledged, reasoned, and deduced to the Assize, in Presence of the Party accused in Face of Judgment, and no otherways, that the accused be not taken, *pro confesso*, or prejudged in any Sort, before he be convicted by lawful Trial &c.

If his Majesty's Advocate and private Party, decline leading or adducing any other Proof, than the Pannel's *Judicial* Confession, and the Court are satisfied with the Firmness of the Pannel's Judgment, then the Lords give their Interlocutor, on the Relevancy of the Indictment in the Terms following, *viz.*

THE Lords Justice-General, Justice-Clerk, and Commissioners of Justiciary, having considered the Indictment

In what Case the Trial must proceed notwithstanding of Confession.

§ Mack. Crim. tit. 24.

The Pannel's Confession may be adduced for Proof.

Interlocutor on the Relevancy.

" ment pursued at the Instance of *A.*
 " with Concourse of *D. F.* his Majesty
 " Advocate for his Highness's Interest, a
 " gainst *C. D.* Pannel, with the Pannel
 " judicial Confession; THEY FIND the In
 " dictment as libelled relevant to infer th
 " Pains of Law; and remit the Panne
 " and Indictment as found relevant to th
 " Knowledge of an Affize.

A. C. I. P. D.

Read to the
Pannel.

The Preses signs the Interlocutor, and
 adds, *I. P. D.* that is, *In presence of the*
Lords; and the Clerk reads it to the Pan
 nel in Presence of the Affize.

The Affizers
chosen and
sworn.

Thereafter the Preses calls for the List
 of Affize from the Clerk, and marks fif
 teen out of the forty five Affizers, and or
 ders the Clerk to call them five by five
 who turning to the Pannel, the Preses ask
 him, If he has any thing to object, whe
 these five may not pass upon his Affize
 and so on to the rest.— If the Pannel ha
 no Objections, the Affizers turn to the
 Lords again, and the Clerk swears them
 after the following Manner:

Form of the
Oath.

You five swear, That you shall Truth say
and no Truth conceal, in so far as you are to
pass upon this Inquest, as you shall answer to
God at the Great Day of Judgment.

This

This Oath is sworn by holding up the Right-hand.

By an old Statute^h, it is ordained, That all Judges shall cause Affizers swear, when they take their Oath, "That they neither have taken, nor shall take, *Meede* or *Budd* of any Party."—Yet this Oath is never tendered to them, except when the Judge or Party are jealous of the Affizers.

The Surgeons of *Edinburgh* were exempted by Queen *Mary* from being cited upon Affizes, because of the Peremptories of the Employment; which was sustained by the Justicesⁱ, and has ever since been constantly observed as a Rule.

If the Pannel has any Objection against the Affizers, his Lawyers must propone the same before they are sworn.—But where the Pannel emits a Confession, there never any Objection made against them.

If any of the Affize be absent, the Lord Advocate may crave them to be unlawed, for not attending the Court; and the Lords will order them to be called:—If they do not answer to their Names, the Court will unlaw such of them as appear from the execution to have been personally summoned:—Which Unlaw the Clerk pronounces to the Macer, who repeats it thus:

The Court shows for Law, that —, —, —, and each of them, are in an Unlaw and Amerciament of One hundred Merks, for
G not

^h Ja. I. Parl. 13. c. 138.

Oath to Affizers by our old Law.

Surgeons of Edinburgh exempted from Affizes.

ⁱ July 1671.

Objections against Affizers must be propounded before they are sworn.

Absent Affizers unlawed.

Form of the Unlaw.

50 The FORM of PROCESS

not compearing to pass upon this Affize, they who were lawfully cited for that Effect.

A. C. I. P. D.

After the Affize are sworn, the Clerk writes in the Book their Names thus :

A S S I Z E.

A. B. Merchant in Edinburgh	C. D. Smith in Edinburgh
H. I. Merchant there	D. B. Baxter there
J. K. Brewer there	H. F. Wright there
D. A. Vintner there	I. C. Merchant there
S. A. Merchant there	J. D. Smith there
B. D. Merchant in Edinburgh	
C. G. Gunsmith there	
S. A. Pewterer there	
T. M. Wigmaker there	
H. A. Wright there	

And Intimation is made by a Macer, at Desire of the Court, that the rest of the Affizers may go away.

Thereafter the Clerk writes in the Book what follows.— *The above Affize being lawfully sworn, and no Objection of the Law in the contrary, the Pursuer, for Probation adduces the Pannel's judicial Confession on the Back of the Indictment.*

Then the Lord Advocate, or Depute addresses the Affize, telling them, That they having heard the Indictment, with the Pannel's judicial Confession, and the Lord's Interlocutor, they are to consider the same, and return their Verdict accordingly.

Thereafter the Lords ordain the Affize to inclose ; which Ordinance the Clerk pronounces to the Macer after this Form.

“ The

The Pannel's
Confession ad-
duced for
Proof.

The Lord
Advocate's
Speech to
the Jury.

"The Lords Justice-General, Justice-Clerk, and Commissioners of Justiciary, ordain the Affize to inclose in this Place presently, and return their Verdict Tomorrow at Twelve o' Clock, and the hail fifteen to be present each under the the Pain of One hundred Merks ; and the Pannel in the mean time to be carried back to Prison.

Order for inclosing the Affize.

Thereafter the Preses orders the Macer to intimate to the fifteen Affizers, not to remove out of the Court-house, till their Verdict is written and sealed.—And, before inclosing of the Affize, the Clerk, by Order of the Court, leaves a *Formula* with them for their Direction :—And whatever Necessaries are wanted, such as, Meat, Drink, Paper, Pens, Ink, Wax, Candles, &c. are furnished. — And the Clerk of Court, nor no other Person, can be present with the Affize after they are inclosed ^k.

None of the Affize to remove till their Verdict is written and sealed.

Then the Macer incloses the Affize, by locking the Door of the Court-house upon them ; so that none of the fifteen must look over a Window, or speak to any Person, before they have agreed on their Verdict ; which if they do, and can be proven, the Pannel will plead to be affoizied in terms of the Statute ^l.

^k Ch. II. Par. 2. c. 16.

Nor look over a Window, or speak to any Person.

^l Ja. VI. Parl. 11. c. 91.

The Affize being inclosed, and a Chancellor and Clerk of their own Number chosen ; and having agreed all in one Voice, or by Plurality of Voices, that the Indict-

After the Verdict is agreed on, it is sealed, and directed to the Lords.

Indictment is *proven*, in terms of the Panel's Confession, then they write their Verdict; which is sealed with the Chancellor or Clerk's Seal, and directed thus *To the Right Honourable the Lords Justice General, Justice-Clerk, and Commissioners of Justiciary at Edinburgh*; which the Chancellor keeps till the Court meet. — When this is done, they call to the Macer (who is attending) to open the Door, for all ended, and their Verdict sealed; who accordingly discloses them.

Sederunt.

The Day thereafter, the Court again meeting, the Clerk inserts the Sederunt of the Judges present in the Book, as before.

Intran.

A. B. Indicted and accused, ut in die precedenti.

Verdict returned.

The Lords being set in Judgment, call for the Chancellor of the Assize to give in their Verdict, who delivers the same to the Preses. — But before opening the Verdict the Clerk calls the fifteen Assizers to answer to their Names; and, if any be absent, the Court will fine them in One hundred Merks each, for not attending at giving in their Verdict. — The Form of the Unlaw is as follows:

Absent Assizers
unlawed.

Form of the
Unlaw.

The Court shows for Law, That — are in an Unlaw and Amerciament

one hundred Merks for not attending at giving in of the Verdict.

A. C. I. P. D.

If any of the Affize are absent, the Lords will delay opening of the Verdict, till they are present, in case of Informalities or Mistakes.—But, if none of the Affize be absent, the Lords open the Verdict, and read the same; which is of the Form following;

Verdict must not be opened till all the Affize are present.

ASSIZE.

B. Merchant in Edinburgh	C. D. Smith in Edinburgh
I. Merchant there	D. B. Baxter there
K. Brewer there	H. F. Wright there
A. Vintner there	J. C. Merchant there
A. Merchant there	J. D. Smith there
B. D. Merchant in Edinburgh	
C. G. Gunsmith there	
S. A. Pewterer there	
T. M. Wigmaker there	
H. A. Wright there	

Edinburgh, the — Day of — 17 —

“ The above Affize having inclosed did chuse *H. I.* to be their Chancellor, and *J. K.* to be their Clerk; and, having considered the Indictment pursued at the Instance of *A. B.* with Concourse of *D. F.* his Majesty's Advocate, for his Highness's Interest, against *C. D.* Pannel, the Lords Justice-General, Justice-Clerk and Commissioners of Justiciary their Interlocutor thereon, with the Pannel's judicial Confession: They all, in one Voice,
“ find

Verdict.

“ find (here the Affize inserts their own
 “ Words, or Words to this Purpose) the L
 “ bel proven, in terms of the Pannel
 “ own judicial Confession: In witnes
 “ whereof, these Presents are subscribe
 “ by our said Chancellor and Clerk, in ou
 “ Names, Place and Date foresaid.

H. I. Chancellor

J. K. Clerk.

When the Jury do return their Verdict upon a Pannel's Confession, it is thought proper the Affize should repeat the Confession as emitted:—And, in case of any Informality, the Court will order them to inclose again.

Verdict read
to the Pannel,

and recorded.

The Court
may delay
pronouncing
Sentence.

Sederunt.

After the Lords have opened the Verdict, and read it, they give the same to the Clerk to insert in the Book; and, after the Verdict is recorded, the Clerk reads it to the Pannel, in presence of the Court who, after Reading, seals up the same with the Chancellor or Clerk's Seal, never to be opened again but by Order of the Lords.

The Judges, if they see Cause, may delay pronouncing Sentence till a further Day; and, in the mean time, ordain the Pannel to be carried back to Prison.

When the Court meets again, the Clerk inserts the Sederunt of the Judges, as before.

Intran.

A. B. Indicted and accused, ut in die precedenti.

The

The Verdict being read from the Book, in open Court, the Judges pronounce Sentence of Death against the Pannel, which is recorded of the Tenor following:

“ The Lords Justice-General, Justice-Clerk and Commissioners of Justiciary, having considered the Verdict of Affize returned upon the — Day of — instant against C. D. Pannel, whereby it is found proven, he is guilty of the Murder of E. F.; therefore the said Lords, by the Mouth of L. M. Dempster of Court, DECERN AND ADJUDGE the said C. D. to be taken upon *Wednesday*, being the — Day of — next to come, from the Tolbooth of *Edinburgh*, to the *Grass-Market* thereof, and there betwixt the Hours of Two and Four of the Clock, in the Afternoon, to be hanged by the Neck, on a Gibbet, untill he be dead: And ordain all his moveable Goods and Gear to be escheat, and in-brought to his Majesty's Use, which is pronounced for Doom.”

Sentence upon the Verdict.

A Sentence condemnator in capital crimes, except Treason, infer only the pains of Death, but no Corruption of blood. — The Consequence of it is likewise a Forfeiture of the Delinquent's Moveables, but not of his Lands, or other heritable Rights. — A Denunciation against a Party, for not appearing to undergo a Trial

The Forfeiture upon a Sentence in capital Crimes, or on a Denunciation for not compearing to abide Trial.

Trial in criminal Prosecutions, infers a Forfeiture of his Moveables; and likewise of his Lands and heritable Rights for Life, he remain under it for Year and Day.

11th Geo. I.
cap. 25.

Within what
Time Senten-
ces for capital
Crimes are to
be put in Ex-
ecution.

By a *British* Statute^m it is declared, That no Sentence or Judgment of any civil Magistrate, or Court of Judicature, importing a capital or corporal Punishment, if pronounced in *Edinburgh*, or any other Part of *Scotland* to the southward of the Frith or River of *Forth*, shall be put in Execution within less than thirty Days after the Date of such Sentence; and if pronounced in any place of the northward of the said Frith, or River of *Forth*, shall be put in Execution in less than forty Days after the Date of such Sentence.

A Nobleman
or Gentle-
man's Sen-
tence.

In case the Criminal be a Nobleman or Gentleman, holding of the Crown, ordinarily the Sentence runs thus, *To have his Head severed from his Body*;—which of old was by a Sword or an Ax, but now by a Machine or Instrument called *the Maiden*.

Sentences of
notorious Cri-
minals.

And notorious Criminals, such as *Parricides, Murderers, Robbers, House-breakers, going under the Name of Egyptian Vagabonds, and Sorners*, are sentenced to be hung in Chains, and generally at the Place where the Crimes have been committed, to be publick Examples *in terrorem* of others:—But in Cases of Beastiality, the Criminal and the Brute are generally stifled with a Rope, and thereafter burnt in the Morning before Sun-rising: As also Witches, &c.

The

The Sentence is read by the Clerk to the Dempster, and the Dempster repeats the same to the Pannel, in the following Words;

Sentences are pronounced by the Dempster.

“WHEREAS, by the Verdict of an Af-fize returned against you *C. D.* Pannel, it is found proven, That you are guilty of the Murder of *E. F.* THEREFORE the Lords Justice-General, Justice-Clerk, and Commissioners of Justiciary, and I in their Name, DECERN and ADJUDGE you the said *C. D.* to be taken upon *Wednesday*, being the — Day of — next to come, from the Tolbooth of *Edinburgh*, to the *Grass-Market* thereof, and there, betwixt the Hours of Two and Four of the Clock in the Afternoon, to be hanged by the Neck on a Gibbet until you be dead. AND ORDAIN all your moveable Goods and Gear to be escheat and in-brought to his Majesty's Use.” And this I give for Doom.
God save the King.

A Sentence in common Cases.

A Woman with Child, convicted of a Capital Crime, is allowed to plead her Belly, for obtaining a Delay of Sentence against her:—In such Cases the Lords grant Warrant to cite Midwives to compear, and try whether the Prisoner be with Child or not;—who compearing, are sworn, and remove out of the Court-house to another Room with the Pannel, and thereafter re-

Women with Child may plead their Belly.

H enter,

A Warrant
must be given
for the Crimi-
nal's Execu-
tion.

enter, and deliver their Opinion in the Matter referred to them ; according to which the Lords either delay or proceed to give Sentence.—After pronouncing Sentence, the Pannel is carried back to Prison, therein to remain till the Day of Execution. — And a Warrant is immediately wrote out by the Clerk, and signed by the Judges, to the Magistrates of *Edinburgh* to see the Sentence put in Execution, they shall be answerable at their highest Peril. The Form of which Warrant is as follows :

Form of the
Warrant.

“ WHEREAS, by the Verdict of an Assize returned against C. D. Pannel, it is found proven, That he is guilty of the Murder of E. F. THEREFORE he is by us the Lords Justice-General, Justice-Clerk, and Commissioners of Justiciary DECERNED and ADJUDGED to be taken upon *Wednesday*, being the —— Day ——next to come, from the Tolbooth of *Edinburgh* to the *Grass-Market* there of, and there, betwixt the Hours of Two and Four of the Clock in the Afternoon, to be hanged by the Neck on a Gibbet until he be dead ; WE ORDAIN the Magistrates of *Edinburgh* to see the said Sentence put in Execution, as they will be answerable on their highest Peril. GIVEN at *Edinburgh* the —— Day of ——, 17—— Years.”—This is termed the *Dead Warrant*.

S E C T. VI.

Concerning the judicial Procedure against Capital Offenders, who stand Trial upon the Probation to be adduced against them, and the Method such Persons have of forcing their own Trials, with the Forms thereto relating.

PERSONS apprehended and imprisoned for any Capital Crime, if they are conscious of their Innocence, or the Defect of the Probation against them, may force their Trials, by giving in a Petition to any of the Lords of Justiciary, (with an Extract of the Warrant of Commitment, signed by the Keeper of the Prison, expressing the Cause or Crime for which they are imprisoned) craving Precepts or Letters of Intimation, for intimating to his Majesty's Advocate, or Party appearing by the Warrant to be concerned, to fix a Day for his Trial, within sixty Days next after the Intimation, under the Pains and Certifications contained in the Statuteⁿ.

By this excellent Law, which was introduced to secure the Subject against wrongous Imprisonment, and undue Delays in Trials; It is declared, That all Informers shall sign their Informations; and that no Person shall be imprisoned for Custody, in order to Trial for any Crime or Offence, without

Persons may force their own Trials.

ⁿ Will. III.
Parl. 6. 1701.

No Person to be imprisoned without a signed Information, and Warrant thereon, in Writing.

without a Warrant in Writ, expressing the particular Cause for which he is imprisoned ; and of which Warrant, the Messenger, or Executor thereof, before Imprisonment, or the Keeper of the Prison receiving the same, is thereby ordained to give a just Double immediately under his Hand to the Prisoner himself, for the Purpose after mentioned. — And all Warrants for Imprisonment, either proceeding upon Informations not subscribed, or not expressing the particular Cause, shall be void and null ; and the Judge or Officer of the Law, and all others whatsoever subscribing the same, and the Executor, or Keeper of the Prison, who shall receive and detain the Person so wrongously ordered to be imprisoned, or refusing a Double of the Warrant of Commitment, shall be liable in the Punishment of wrongous Imprisonment.

Crimes not capital declared bailable.

Manner of such Bail, and the Consequences.

And, to the Effect Persons imprisoned for Custody, in order to Trial, may not be wrongously delayed and detained, it is declared by this Act, That all Crimes not inferring Capital Punishment shall be bailable ; and that the Prisoner, or Person ordered to be imprisoned, may apply to the Committer, or Commissioners of Justiciary, or other Judge competent, for Cognation of the Crime, and offer to find sufficient Caution to appear, and answer to any Libel that shall be offered against him, for the Crime or Offence wherewith

he is charged, at any time within the space of six Months, and that under such Penalty as the said Committer, or the Lords of Justiciary, or other Judge competent, shall modify and appoint.—And, upon such Application, the Committer, or Lords of Justiciary, or other Judge competent, shall first cognosce whether the Crime be capital or not, in order to finding the Bail allowable; and if they find itailable, then they are obliged to modify the Sum for which the Bail is to be found, within 24 Hours after such Application, not exceeding 6000 Merks for a Nobleman, 3000 Merks for a landed Gentleman, 1000 Merks for any other Gentleman and Burghers, and 300 Merks for any other inferior Person, under the Pain of wrongous Imprisonment.—And, upon the Party's finding such Bail, as aforesaid, and delivering or offering the same to the Clerk, and Instruments taken upon the Delivery, or Offer of sufficient Caution, the Committer, or Judicatory competent, shall order his Liberation, or discharge his Imprisonment, if not incarcerate, under the Penalty of wrongous Imprisonment.—And such Bail being offered to the Judge or Magistrate, to whom the Execution of the Warrant is directed, he is obliged to accept of such Bail, and set the Prisoner at Liberty under the like Penalty.

By the same Act it is also declared, That, upon Application of any Prisoner
for

Intimations
for Trial, how
they proceed,
&c.

for Custody in order to Trial, whether for capital or bailable Crimes, to any of the Lords of Justiciary, or other Judge competent, for judging the Crime for which he is imprisoned, and producing the Double of the Warrant of his Commitment under the Keeper's Hand, the said Judge shall, within 24 Hours after such Application, under the Pain of wrongous Imprisonment, give out Letters or Precepts directed to Messengers, for intimating to his Majesty's Advocate, or Procurator Fiscal, and Party concerned, if any be, to fix a Diet for the Trial within sixty Days after the Intimation; with Certification if they fail, the Prisoner shall be discharged and set at Liberty without Delay; and the Judges are ordained to do the same under the Penalty foresaid, unless the Delay be upon the Prisoner's Petition or Desire.

Trial upon
such Intima-
tion, and the
Consequen-
ces.

The Diet for Trial being prefixed, the Magistrates of the Place, or Keeper of the Prison, shall be then obliged to deliver the Prisoner to a sufficient Guard, to be provided by them, that the Prisoner may be sifted before the Judge competent, and his Majesty's Advocate, or Procurator Fiscal, shall insist in the Libel, and the Judge put the same to a Trial, to be determined by a final Sentence within 40 Days, if before the Lords of Justiciary and 30 Days, if before any other Judge:— And if his Majesty's Advocate, or Procurator

ator Fiscal do not insist in the Trial at the Day appointed, and prosecute the same to the Conclusion, then the Diet shall be *simpliciter* deserted, and the Prisoner immediately liberate from his Imprisonment, for that Crime or Offence.

If no Process be raised and execute within the Time allowed, or, in case of not insisting at the Diet, and bringing the Process to a Conclusion, within the foresaid Space, then the Prisoner may apply to any of the Lords of Justiciary, or Judge-competent; and, upon his Application, and instructing that the Time limited by Law, for insisting or concluding the Process, is elapsed, and Instruments taken thereupon, the Lords of Justiciary, or Judge-competent are obliged, within twenty four Hours, to issue out Letters or Precepts direct to Messengers, for charging the Magistrates, or Keepers of the Prison, where the Prisoner is detained, for setting him at Liberty, under the Pain of wrongous Imprisonment; without Prejudice to the Keeper of the Prison, as to his Dues in all Cases of Liberation, as formerly before this Act.

And the Prisoner being so liberate, it shall not be lawful to put or detain him in Prison for the same Crime, under the Penalty of wrongous Imprisonment, in case his former Liberation be made known to the Committer before the Warrant be granted, or, in case he be detained, after his former Imprisonment is sufficiently instructed

No Process being raised within the 60 Days, the Consequences.

The Prisoner not to be again committed or detained for the same Crime, except upon new criminal Letters.

structed to the Keeper of the Prison, who upon Production of the former Warrant of his Liberation from his Imprisonment for the same Crime, shall be obliged to set the Prisoner forthwith at Liberty, unless there be new Criminal Letters raised before the Commissioners of Justiciary, and duly execute against the said Prisoner. In which Case, he shall be imprisoned anew, tho' the said Letters be raised for the same Crime, for which he was formerly incarcerated.—And it is declared lawful to apprehend and secure him at the Time of executing the said Letters, or at any Time thereafter, before Trial, and to detain him till his Trial, or that he be set at liberty in due Course of Law.

In such Cases, when must the Trial be concluded?

And his Majesty's Advocate is to inform in the said Libel, and prosecute the same to a final Sentence, within Forty Days after the Prisoner is of new incarcerated thereupon, unless the Delay be upon the Application, or at the Desire of the Prisoner, wherein if the King's Advocate fail the Diet is to be deserted *simpliciter*, and the Prisoner ordained to be set at liberty from the said Imprisonment, and he be forever free from all Question or Process for the said Crime or Offence.

An Exception in Cases of Treason.

But, in Cases of Treason, the Prisoner shall not have Access to apply for prefixing a Diet for Process for 40 Days, after his Imprisonment, after elapsing of which the Lords of Justiciary, or any one of them

em, shall, upon the Application of the Prisoner, issue forth Precepts, as in other Cases.—And, in case of not insisting or prosecuting the Process as aforesaid, the Prisoner is to be liberated upon sufficient Bail found, to compear, at any Time when called, within twelve Months, for his good and peaceable Behaviour in the mean time ; the said Bail not exceeding the Double of the Bail in other Crimes.

By this Act, it is further declared, That the same is not to be extended to Imprisonments for Debts, or upon Sentences for any other Causes than what is above mentioned, nor to the Laws concerning the Detentions and Thefts in the Borders and Highlands, nor to Imprisonments for breaking the Peace, or for Indignities to Magistrates, and other inferior Judges, &c. for which they are to proceed as formerly; the Person imprisoned having always Relief by offering Bail, and demanding a Trial as above.

The Penalties by this Act are *L.* 6000. for a Nobleman, and *L.* 4000. for a landed Gentleman, and *L.* 2000. for every other Gentleman and Burghers, and *L.* 400. for other Persons.—And, if the Prisoner be detained after elapsing of the respective days above prescribed for obtaining his Liberty, the Judges, Magistrates or others wrongously detaining, to be liable in the Penalties following, *viz.* of *L.* 100. each

I

Day

Crimes to which this Act is not to be extended.

Penalties for wrongous Imprisonment by this Act.

66 *The FORM of PROCESS*

Day for a Nobleman, L. 66. 13. s. 4.
for a landed Gentleman, L. 33. 6. s. 8.
for other Gentlemen and Burgesſes, L.
13. s. 4. d. for other Perſons, beſides
ſing their Offices, and being incapable
publick Truſt.—The Penalty to belong
the Party imprifoned, to be recovered
Proceſs before the Court of Seſſion, ſum-
marily diſcuſſed without abiding the Court
of the Rolls, and not be modified by any
Power or Authority whatſomever.

To what this
Act is extend-
ed.

This Act is extended to all Confin-
ments, not either conſented to by the Par-
ty, or inflicted after Trial by Sentence.—
And diſcharges all cloſe Imprifonment be-
yond the Space of eight Days from the
Commitment, under the Pains of wrong-
ous Imprifonment above mentioned.

None to be
transported
without their
Conſent, or by
legal Sen-
tence.

By this Act, no Perſon is to be trans-
ported furth of the Kingdom; except with
his own Conſent given before a Judge,
or by legal Sentence.—And ſuch Judges and
Magiſtrates who ſhall give orders otherwiſe
for ſuch Transportation, as likewise all ſuch
who ſhall transport any Perſon without a
lawful Warrant from a Judge or Magiſ-
trate, ſhall be liable to the Pains of wrong-
ous Imprifonment, and declared incapable
of all publick Truſt.

Proceſſes for
wrongous Im-
prifonment
preſcribe with-
in three Years.

Proceſſes for wrongous Imprifonment
on this Act ſhall preſcribe if not purſued
within three Years, after the laſt Day of
the wrongous Imprifonment; and, Proceſ-
ſes

is being once raised, the same shall pre-
scribe, if not insisted in yearly thereafter.

And, by a *British* Statute °, it is decla-
red lawful for every Magistrate, Judge,
and Court of Judicature in *Scotland*, to ex-
tend the Bail to be taken on any Criminal
information, in virtue of the foresaid Act,
to double the Sums therein mentioned.

° 11th Geo. I.
cap. 26.

Bail on Cri-
minal Infor-
mations by
this Act.

*follows the Form of the Petition which the
Prisoner gives in to the Lords for Letters
or Precepts of Intimation.*

*to the Right Honourable the Lords Justice-
General, Justice-Clerk and Commissioners
of Justiciary,*

**PETITION of C. D. Prisoner in
the Tolbooth of Edinburgh**

Humbly sheweth,

THAT where, I being incarcerate with-
in the said Tolbooth, by Warrant of
the Lord Justice-Clerk, for the Crime of
murder alledged committed by me, con-
form to an Information subscribed against
me by *A. B*: In which Tolbooth, I have
continued for some considerable Time,
without any Appearance of being brought
to a Trial, whereby I may vindicate my In-
nocence of the said alledged Crime; there-
fore I humbly address myself to your Lord-
ships,

Petition for
Letters of In-
timation,

ships, for the Benefit of the Act of Parliament of K. William, made in the Year 1701, intituled, *Act for preventing wrong Imprisonment, and against undue Delays Trials*, having, in terms of the said Act produced the Double of the Warrant of my Commitment, under the Hand of the Keeper of the Prison.

May it therefore please your Lordships, grant Warrant for Letters of Intimation, for charging his Majesty's Advocate and Party appearing by the Warrant to be concerned, to fix a Diet for my Trial, within sixty Days, in Terms, and under the Certifications contained in the said Act.

According to Justice, &c.

The Prisoner signs this Petition, or Advocate for him.

Within Twenty four Hours after presenting of the Petition and signing the Deliverance thereon, Letters of Intimation must be given out by the Clerk of Court as directed by the Act, under the Pain of wrongous Imprisonment P:—The Deliverance on this or the like Petition is as follows, viz,

P Will. III.
Parl. 1, 1701.

" The Lords Justice-General, Justice-
" Clerk and Commissioners of Justiciary,
" having heard the within Petition, with
" the Double of the Warrant of Commit-
" ment, attested by the Keeper of the Pri-
" son herewith produced, GRANT WAR-
" RANT for Letters of Intimation to the
" Petitioner, to the Effect and in the Terms
" of the Act of Parliament within men-
" tioned."

Deliverance
on the Petiti-
on.

A. C. I. P. D.

*Follows the Letters of Intimation on the fore-
said Petition.*

GEORGE, by the Grace of GOD,
King of Great Britain, France and
Ireland, Defender of the Faith, &c. FOR-
ASMUCHAS, by Petition given in and pre-
sented to Our Lords Justice-General, Ju-
stice-Clerk, and Commissioners of Justici-
ary, by C. D. Prisoner in the Tolbooth of
Edinburgh, humbly shewing, THAT WHERE,
the Petitioner being incarcerated within the
Tolbooth of Edinburgh, by Warrant of the
Lord Justice-Clerk for the Crime of Mur-
der alledged committed by him, conform
to an Information subscribed against him
by A. B. in which Tolbooth he has con-
tinued for some considerable Time, with-
out any Appearance of being brought to a
Trial, whereby he might vindicate his In-
nocence of the said alledged Crime :
Therefore he humbly addressed himself to
Our

Letters of In-
timation.

Letters of Intimation.

Our said Lords, for the Benefit of the Act of Parliament of King *William* 1701, intitled, *Act for preventing wrongous Imprisonment, and against undue Delays in Trials*, having, in terms of the said Act, produced the Double of the Warrant of Commitment, under the Hand of the Keeper of the Prison; and therefore craving it might please their Lordships, to grant Warrant for Letters of Intimation, for charging Our Advocate, and the Party appearing by the Warrant to be concerned, to fix a Diet for the Petitioner's Trial, within sixty Days next after the Intimation, in the Terms, and under the Certifications contained in the said Act; as the said Petition bears: WHICH PETITION, with a Double of the Warrant of Commitment, signed by the Keeper of the Prison therewith produced, being read and considered by their Lordships, they, by their Deliverance thereon, ordained thir Our Letters to be directed thereon, in manner underwritten. OUR WILL IS HEREFOR, and We charge you strictly and command, That, incontinent thir Our Letters seen, ye pass, and in Our Name and Authority, make due and lawful Intimation to Our Advocate, or his Deputes, and the Party appearing by the attested Double of the Warrant of Commitment to be concerned, to fix a Diet for the said *C. D.* his Trial, within sixty Days next after the Intimation, in the Terms, and under the Certifications contained in the Act

before the JUSTICIARY COURT. 71

Act of Parliament above mentioned: According to JUSTICE, as ye will answer to Us thereupon. The which to do We commit to you, conjunctly and severally, Our full Power, by thir Our Letters, delivering them by you duly execute and inforced again to the Bearer. GIVEN under Our Signet at *Edinburgh*, the ——— Day of ———, and of Our Reign the ——— Year, 17—.

Per actum Dominorum Commissionariorum Justiciarum.

J. D. Clerk.

These Letters are signet with the Seal of Court.

The Letters of Intimation are given to Macer of Court, or Messenger, to execute; which being done, he returns an Execution thereof against the Advocate and Party concerned, to fix a Day for the Petitioner's Trial, within sixty Days after the Intimation, (in every Crime except Treason): — In which case the Prisoner cannot apply for Letters of Intimation till he be forty Days in Prison, and these Days are allowed for preparing of the Process; whereas in other Crimes, he may apply the Day after he is imprisoned^a.

To be execute
by a Macer or
Messenger.

In Cases of
Treason, the
Prisoner cannot
apply till
he be forty
Days in Prison.

^a Will. III.
Parl. 1. 1701.

Follows

Follows the Copy of the Intimation to the Lord Advocate, and private Party concerned, subjoined to a Double of the Letters of Intimation.

Copy of Intimation to the Lord Advocate.

I J. G. Macer to the Justiciary Court, by virtue of Letters of Intimation, raised at the Instance of C. D. Prisoner in the Tolbooth of *Edinburgh*, (whereof the above is an just Copy to the Will) in his Majesty's Name and Authority, I make due and lawful Intimation to you D. F. his Majesty's Advocate, for his Highness's Interest, to fix a Diet for the Trial of the said C. D. within sixty Days next after my Intimation, in the Terms, and under the Certifications contained in the Act of Parliament above mentioned, conform to the principal Letters dated and signet at *Edinburgh*, the — Day of —, and — Year, in all Points. This Intimation I make to you upon this — Day of — and Year foresaid, before these Witnesses, —, —, and —

Per actum Dominorum Commissionariorum Justiciarum.

J. G. Macer.

Follows

follows the Execution of the Copy given to the Lord Advocate, and private Party concerned.

UPON the — Day of —, and Execution
— Years, I J. G. Macer to the Ju- thereon.
iciary Court, past at Command of Letters
of Intimation, at the Instance of C. D.
prisoner in the Tolbooth of *Edinburgh*, and
by virtue thereof, in his Majesty's Name
and Authority, made due and lawful In-
timation to D. F. his Majesty's Advocate,
for his Highness's Interest, and G. D. pri-
vate Party concerned, to fix a Diet for the
said C. D. his Trial, within the Space,
under the Pains, and made Certificati-
on as is within expressed. This I did af-
ter the Form and Tenor of the said Let-
ters in all Points, by delivering a full
Double of the Letters to the Will, with a
short Copy upon the End thereof, subscri-
ed by me, to the said D. F. his Majesty's
Advocate, and G. D. private Party con-
cerned, both personally apprehended;
which Copies did contain the Day and Date
whereof, Witnesses Names and Designations
herein insert, present thereat, and hereto
subscribing, viz. — and —. And, for
the more Verification hereof, I and the
said Witnesses have subscribed the same.

J. G. Macer.

A. D. Witness.

E. M. Witness.

K

So

Within what
Time the Trial
upon Intima-
tion must be
finished.

1 Will. III.
Parl. 1. 1701.

So soon as Intimation is given, the Lord Advocate, or private Party, (if they intend to insist in the Prosecution) prepares an Indictment against the Prisoner with a List of Witnesses thereon, signed by him, and gives the same in to the Clerk of Court, to issue out Letters of Diligence for summoning the Prisoner, Witnesses and Assizers, to the Day of Compearance in order for his Trial: And this Trial must come on within the sixty Days, and be finished within the forty or thirty Days, the Law directs. — When the sixty Days are run, and no Indictment executed, the Prisoner instruments the Lord Advocate or private Party, and thereafter presents Petition to the whole, or any of the Lords of Justiciary, for Letters of Liberation in the Tenor following.

Unto the Right Honourable the Lord Justice General, Justice-Clerk and Commissioners of Justiciary,

The PETITION of C. D. Prisoner
the Tolbooth of *Edinburgh*,

Humbly sheweth,

Petition for
Letters of Li-
beration.

THAT where, upon a signed Intimation given in against me by A. B. for the alledged Crime of Murder committed by me, he obtained Warrant from the Lord Justice-Clerk, and imprisoned me in the said Tolbooth, where I still remain

ain.—Being conscious of my Innocency, applied to your Lordships for Letters or precepts of Intimation, directed against D. his Majesty's Advocate, and G. D. private Party concerned, for fixing a Diet for my Trial, in the Terms of the Act of Parliament 1701; and your Lordships having granted the Desire thereof, I caused charge his Majesty's Advocate, and the private party concerned, for that Effect, as the precepts or Letters of Intimation and Execution thereof, herewith produced, will testify.— And seeing the sixty Days, from the Date of the said Charge, are more than elapsed, I do therefore address your Lordships for my Liberation, in the Terms of the said Act of Parliament,

May it therefore please your Lordships, in consideration of the Premises, to grant Warrant for my Liberation, as the said Law directs.

According to Justice, &c.

C. D.

The Prisoner signs this Petition, or an advocate for him.

Follows the Interlocutor on the said Petition.

“The Lords Justice-General, Justice-Clerk and Commissioners of Justiciary, having considered the within Petition,

Deliverance
thereon.

“ tion,

“ tion, with the Letters of Intimation, and
 “ Execution therewith produced, GRANT
 “ Letters or Precepts of Intimation, directed
 “ rect to Macers or Messengers, for charging
 “ ging the Magistrates of *Edinburgh*, and
 “ Keepers of their Tolbooth, within which
 “ the Prisoner is detained, to set him at
 “ Liberty furth thereof, under the Pain
 “ contained in the Act of Parliament.”

A. C. I. P.

*Follows the Letters of Liberation on the foregoing
said Petition.*

Letters of Li-
beration.

GEORGE, by the Grace of GOD
 King of *Great Britain, France and*
Ireland, Defender of the Faith, &c. For
 AS MUCH AS, by Petition given in and pre-
 sented to Our Lords Justice-General, Jus-
 tice-Clerk and Commissioners of Justice
 ciary, by C. D. Prisoner in the Tolbooth of
Edinburgh, humbly shewing, THAT WHERE-
 upon an signed Information given in
 against the said C. D. for the alledged Crime
 of Murder, he thereupon obtained Warrant
 rant from Our Lord Justice-Clerk, for im-
 prisoning the said C. D. within the said
 Tolbooth, where he still remains; and
 being conscious of his Innocency, he ap-
 plied to Our said Lords for Precepts directed
 against Our Advocate, and private Parties
 concerned, for fixing a Diet for the Petitioner's
 Trial, in the Terms of the Act of
 Parliament 1701; and Our said Lords have

vin

ing granted the Desire thereof, the Petitioner caused charge Our Advocate, and Party concerned, for that Effect, as the Letters of Intimation, and Execution thereof, therewith produced, doth testify. And seeing the sixty Days, from the Date of the said Charge, are more than elapsed, the Petitioner did address Our said Lords for Letters of Liberation, in terms of the said Act of Parliament: And therefore craving it might please their Lordships, in consideration of the Premises, to grant Warrant for his Liberation, in terms of the said Act, as the said Petition bears: WHICH PETITION, with the Letters of Intimation, and Executions thereof, therewith produced, being read and considered by their Lordships, they, by their Deliverance thereon, of the Day and Date of these Presents, ordained thir Our Letters to be direct thereupon in manner underwritten: OUR WILL IS HEREFOR, and We charge you strictly and command, That, incontinent thir Our Letters seen, ye pass, and, in Our Name and Authority, command and charge the said Magistrates of *Edinburgh*, and Keepers of their Tolbooth, within which the said C. D. is detained, to set the Person of the said C. D. at Liberty furth thereof, under the Pains contained in, and conform to the Act of Parliament 1701: ACCORDING TO JUSTICE, as ye will answer to Us thereupon: The which to do We commit to you,

Letters of Liberation,

you, conjunctly and severally, Our full Power by thir Our Letters, delivering them by you duly execute and indorsed again to the Bearer. GIVEN under Our Signet at *Edinburgh*, the——Day of——, and of Our Reign the——Year, 17—.

*Per actum Dominorum Commissionariorum
Justiciarum.*

J. D. Clerk.

The Letters are signet with the Seal of Court.

Manner of executing the Letters.

These Letters must be issued within 24 Hours after presenting of the Petition, under the Pain of wrongous Imprisonment, and must be execute by a Macer or Messenger, charging the Magistrates of *Edinburgh*, and all other Magistrates within *Scotland*, and Keepers of their Prisons whatsoever, and all Persons in whose Custody the said C. D. is detained, furthwith to set him at Liberty, out of their Tolbooths, and others their warding Places, under the Penalties contained in the foresaid Act of Parliament.

What if the sixty Days elapse before the Party get clear of Prison, and the Prosecutor intending to insist?

But, if the sixty Days be elapsed, and no Indictment given the Prisoner in that Time, and he perhaps detained in Prison for his Dues, or otherwise, after he has obtained Letters of Liberation; in that Case, if the Lord Advocate or private Party intends to prosecute the Prisoner, he must be charged with Criminal Letters, and a Warrant

Warrant obtained for imprisoning him of new, or detaining him there for the same Crime, and the Process must be concluded within forty Days thereafter.——It is to be observed, that Criminal Letters are never execute, except against those that are out of Prison, or, in case where the Prisoner is detained for his Fees, and even then as to the Prosecutor or Crime, the Criminal is reckoned out of Prison, because of his Letters of Liberation, and he is only detained for his Fees.——If the Advocate or his Depute incline to prosecute the Criminal, upon the forty Days after his Liberation, he applies to the Lords for Criminal Letters, by a Bill made out and signed by him or his Depute, and gives it in to the Clerk of Court, who writes thereon after this Manner :

*Apud Edinburgum——, die mensis——
anno Domini——, fiat ut petitur to the——
Day of——next to come, and one of the
Judges signs the same.—With the Bill there
is a List of forty five Affizers made out
and signed by a Quorum of the Lords.*

Follows the Form of the Criminal Letters taken out against a Criminal, whether in Prison or out of Prison, when the forty Days take place.

GEORGE, by the Grace of GOD,
King of Great Britain, France and
Ireland, Defender of the Faith : To Our
Lovits

Criminal Letters against a Party when the forty Days take place.

Criminal
Letters.

Lovits———Macers Messengers at Arms
Our Sheriffs in that Part, conjunctly and
severally, specially constitute, *greeting*
FORASMUCHAS, it is humbly meaned and
complained to us by Our Lovit D. F.
Our Advocate for Our Interest, upon C. D.
THAT WHERE, by the Laws of God, and
of this, and every well-governed Realm
the Crimes of Murder are severally punish-
able, with all the Aggravations thereof and
Tendencies thereto, particularly by Act of
Parliament———; YET TRUE IT IS, AND
OF VERITY, that the said C. D. is guilty
Actor Art and Part of the foresaid Crime
IN SO FAR AS, he, of himself, or with and
by Accomplices, did masterfully, out of
murdering Design, and from a propense
and premeditate Malice, lie in wait upon
the——Day of———, betwixt——— and
———, in the Parish of———, and County
of———, at the Place called——— or near
by that Place, and then and there, betwixt
the Hours of——— and———, in the Night
Time of the said Day, or upon one or other
of the Days of the said Month and Year
or upon one or other of the Hours of the
said Night, or Nights, of the said Day or
Days, feloniously attack the Person of E. F.
without any Manner of Provocation, and
that, as he was coming home to his own
House, Family, or Place of Residence
and then and there, or near by the said
Place, he, of himself, or said Accompli-
ces, did murder the said E. F. with a Durk,
Poinard,

binard, or some other mortal Weapon, by
 thrusting the same below his left Pap; op- Criminal
 posite to his Heart, whereof he immedi- Letters.
 ely died; and thereafter most inhuman-
 and barbarously did drag him to a Pond
 near by, where he, of himself, or said
 accomplices, threw the said *E. F.* in, on
 purpose to conceal his cruel and wicked
 murder, and, when missed, and Search
 made, he was there found dead. WHICH,
 any Part thereof, or he being guilty,
 of the Art and Part of the said Crime, be-
 ing found proven by the Verdict of an As-
 ses, before our Lords Justice-General, Ju-
 stice-Clerk and Commissioners of Justicia-
 ry, he ought to be punished with the Pains
 of Law, to the Example and Terror of o-
 thers from committing the like in Time
 coming. OUR WILL IS HEREOF, and
 we charge you strictly, and command, that,
 as soon as your Letters seen, ye
 shall, and, in our Name and Authority,
 command and charge the said *C. D.* above
 complained upon, to compear, and to come
 and find sufficient Caution and Sovery, act-
 ing in the Books of Adjournal, That he
 shall compear before our Lords Justice-Ge-
 neral, Justice-Clerk and Commissioners of
 Justiciary, within the Tolbooth or Crimi-
 nal Court-house of *Edinburgh*, the—
 day of——next to come, in the Hour
 of Cause, there to underly the Law for the
 crime above mentioned. And that, un-
 der the Pains contained in the Acts of
 L Parliament.

**Criminal
Letters.**

Parliament. And that ye charge him personally, if he can be apprehended, and failzieing thereof at his Dwelling-house and by open Proclamation at the Mark Cross of the Head-burgh of the Shire Stewarty, or other Jurisdiction where he dwells, to come and find the said Caution and Sovertie acted in Manner foresaid, within—Days next after he bees charged by you thereto, under the Pain of Rebellion and putting of you to the Horn; which Days being by-gone, and the said Sovertie not found, nor no Intimation made by him to you of the finding thereof, that, incontinent thereafter, ye denounce him our Rebel, and put him to our Horn, escheat and in-bring all his moveable Goods and Gear, to our Use for his Contempt and Disobedience; and that you, within fifteen Days thereafter, cause registrate thir our Letters, with the Executions thereof, in our Books of Adjournal, conform to the Act of Parliament made thereanent. And if he come and find the said Caution, (Intimation always being made by him to you of the finding thereof), that ye summon an Affize hereto, not exceeding the Number of forty five Persons, together with such Witnesses who best know the Veritie of the Premises, whose Names shall be given you in List, subscribed by the said Complainer, to compear before Our said Lords Day and Place foresaid, the said Persons of Inquest to pass upon his Affize

and the said Witnesses to bear leal and sooth-
 fast Witnessing, in so far as they know, or
 shall be speared at them, ilk Person under
 the Pain of One hundred Merks. ACCOR-
 DING TO JUSTICE, as ye will answer to us
 hereupon: The which to do, we commit
 to you, conjunctly and severally, our full
 power by thir our Letters, delivering them
 to you duly execute and indorsed again to
 the Bearer. GIVEN under our Signet at
 Edinburgh, the——Day of——, and of
 our Reign the——Year 17——.

*Ex deliberatione Dominorum Commissiona-
 riorum Justiciarum.*

J. D. Clerk,

These Letters are signet with the Seal of
 Court.

The Letters being made out, signed by
 the Clerk, and given to the Lord Advo-
 cate or his Depute, are ordered to be exe-
 cuted against the Criminal.—If he be out
 of Prison, Application is made by the Ad-
 vocate or his Depute to any of the Lords
 for a Warrant, for apprehending and incar-
 cerating the Criminal, (or, if he be in Pri-
 son, the Letters are to be first execute a-
 gainst him, and thereafter Intimation of the
 Warrant is to be made to the Keeper of the
 Prison), and, so soon as the Letters are exe-
 cuted against the Criminal, if personally and
 out of Prison, the Executor is to appre-
 hend and imprison him in the next sure
 Tolbooth,

The Manner
 of executing
 the Letters.

Tolbooth, therein to remain until he be thence liberate in due Course of Law.

Private Parties
must find Cau-
tion to report
the Letters.

• Ja. VI. Parl.
6. cap. 78.

If the Criminal Letters be at the Instance of the private Party, with Concurrence of the Lord Advocate, the Party must find Caution for reporting the Letters. But if the Letters be at the Lord Advocate's Instance only, he finds no Caution, because he pursues *ex officio*.

Follows the Copy given to the Criminal.

Copy to the
Criminal

I J. G. Macer to the Justiciary Court, by virtue of Criminal Letters, raised at the Instance of D. F. his Majesty's Advocate for his Highness's Interest, against C. D. in his Majesty's Name and Authority, command and charge you the said C. D. to compare, and to come and find sufficient Caution and Soverty acted in the Books of Adjournal, that you shall compare before the Lords Justice-General, Justice-Clerk and Commissioners of Justiciary, within the Tolbooth or Criminal Court-house of Edinburgh, the——Day of——next to come in the Hour of Cause, there to underly the Law for the Crime mentioned in the said Criminal Letters, and that under the Pain contained in the Acts of Parliament. And that you come, and find the said Caution and Soverty acted in Manner foresaid, within——Days next after this my Charge, under the Pain of Rebellion and putting

you to the Horn, with Certification, conform to the principal Letters dated and signed at *Edinburgh* the——Day of——and——Year; of the which Criminal Letters, with a List of the Affizers Names and Designations that are to pass upon your Affize, and List of the Witnesses Names and Designations that are to be adduced against you, I herewith give you a just and exact Copy, upon this——Day of——and——Year, before these Witnesses——and——.

Ex deliberatione Dominorum Commissionariorum Justiciarum.

J. G. Macer.

Follows the Execution against the Criminal, if personally apprehended,

UPON the——Day of——, and——Year, I J. G. Macer to the Justiciary Court, past at Command of Criminal Letters, raised at the Instance of *D. F.* his Majesty's Advocate, for his Highness's Interest, and by virtue thereof, in his Majesty's Name and Authority, commanded and charged *C. D.* to compear, and to come and find sufficient Caution and Surety, acted in the Books of Adjournal, that he shall compear before the Lords Justice-General, Justice-Clerk and Commissioners of Justiciary, within the Tolbooth, or Criminal Court-house of *Edinburgh*, the——Day of——next to come, in the Hour of Cause, there to underly the Law for the Crime

Execution against the Criminal, if personally apprehended.

Crime within mentioned. And that he come and find the said Caution and Sovereignty, acted in Manner foresaid, within the Space, under the Pains, and made Certification, as is within expressed. This I did after the Form and Tenor of the said Criminal Letters in all Points, which are dated and signet at *Edinburgh* the — Day of —, by delivering to the said C. D. a full Double of the said Letters, with a List of the Affizers Names and Designations that are to pass upon his Affize, and a List of the Witnesses Names and Designations that are to be adduced against him, with a short Copy by way of Charge subjoined thereto, subscribed by me, personally apprehended; which Copy did contain the Day and Date hereof, Witnesses Names and Designations therein insert, present thereat, and hereto subscribing, viz. — and —. And for the more Verification, hereof, I and the said Witnesses have subscribed the samen.

J. G. Macer,

A. F. Witness,

A. G. Witness,

Follows the Execution against the Criminal, if not personally apprehended.

Execution against a Criminal not personally apprehended.

UPON the — Day of —, and — Year, I J. G. Macer to the Justiciary Court, past at Command of Criminal

Criminal Letters, raised at the Instance of D.
 F. his Majesty's Advocate, for his High-
 ness's Interest, against C. D. and by vir-
 tue thereof, in his Majesty's Name and
 Authority, commanded and charged the
 said C. D. to compear, and to come and
 find sufficient Caution and Soverty, acted
 in the Books of Adjournal, that he shall
 compear before the Lords Justice-Gene-
 ral, Justice-Clerk and Commissioners of
 Justiciary, within the Tolbooth, or Crimi-
 nal Court-house at *Edinburgh*, the —
 Day of — next to come, in the Hour
 of Cause, there to underly the Law for
 the Crime within mentioned; and that he
 come and find the said Caution and Sover-
 ty, acted in Manner foresaid, within the
 Space, under the Pains, and made Certifi-
 cation as is within expressed. This I did,
 by leaving a full Double of the said Letters,
 with a List of the Affizers Names and De-
 signations that are to pass upon his Af-
 fize, and a List of the Witnesses Names
 and Designations that are to be adduced a-
 gainst him; with a short Copy by way of
 Charge subjoined thereto, subscribed by
 me to the said C. D. (with his Wife, Son,
 Daughter, or Servant) and that within the
 Lock-hole of the most patent Door of his
 Dwelling-house, after six several Knocks
 given by me thereat, because I could not
 get him personally apprehended. And
 sickenlike, upon the — Day of —, and
 Year foresaid, I past to the Market-crofs
 of

Execution a-
 gainst a Cri-
 minal not
 personally ap-
 prehended.

**Execution a-
gainst a Cri-
minal not per-
sonally appre-
hended.**

of ———; Head-burgh of the Sherifffdom thereof, within which Sherifffdom the said *C. D.* dwells and resides, and his Landly; and thereat, after the crying of three several Oyesses, open Proclamation and publick reading of the within-written Criminal Letters, I, in Name and Authority foresaid, commanded and charged the said *C. D.* to compear before the said Lords Day and Place within contained, and that within the Space, under the Pains, and made Certification as is within expressed. This I did, by fixing and leaving a full Double of the said Letters, with a List of the Affizers Names and Designations that are to pass upon his Assize, and a List of the Witnesses Names and Designations that are to be adduced against him; with a short Copy by way of Charge subjoined thereto, subscribed by me, at and upon the said Market-cross, for the said *C. D.* because I could not get him personally apprehended: All which Copies did contain the Days and Dates hereof, Witnesses Names and Designations therein insert, present thereat, and hereto subscribing, *viz.* ——— and ———. And for the more Verification hereof, I and the said Witnesses have subscribed the famen.

J. G. Macer.

A. B. Witnes.

F. G. Witnes.

Follows

follows the Copy given in to each of the Witnesses.

J. G. Macer to the Justiciary Court, by virtue of Criminal Letters raised at the instance of D. F. his Majesty's Advocate, for his Highness's Interest, against C. D. in his Majesty's Name and Authority, summon, warn, and charge you——, to compare before the Lords Justice-General, Justice-Clerk and Commissioners of Justiciary, within the Tolbooth, or Criminal Court-house of *Edinburgh*, the —— Day —— next to come, in the Hour of ——, to bear leal and sooth-fast witnessing, IN SO FAR AS you know, or shall be required at you, anent the said C. D. his guiltiness of the Crime libelled against him; ilk Person under the Pain of One hundred Merks. This I give you upon this —— Day of ——, and —— Year, before these Witnesses, — and —.

Copy to each of the Witnesses.

Ex deliberatione Dominorum Commissionariorum Justiciarum.

J. G. Macer.

follows the Execution upon summoning the Witnesses.

UPON the —— Day of ——, and —— Year, I J. G. Macer to the M Justiciary

Execution against Witnesses.

Execution a-
gainst Wit-
nesses.

Justiciary Court, past at Command of Criminal Letters, raised at the Instance of *F.* his Majesty's Advocate, for his Highness's Interest, against *C. D.* and by virtue thereof, in his Majesty's Name and Authority, summoned, warned and charged ——— and ———, to compear before the Lords Justice-General, Justice-Clerk and Commissioners of Justiciary, within the Tolbooth, or Criminal Court-house *Edinburgh*, the ——— Day of ——— next to come, in the Hour of Cause, to be lawful and sooth-fast witnessing, IN SO FAR as they know, or shall be speared at thereafter anent the said *C. D.* his Guiltiness of the Crime libelled, ilk one of the said Witnesses under the Pain of One hundred Merks. This I did, conform to the said Criminal Letters in all Points, which are dated and signet at *Edinburgh*, the ——— Day of ——— by delivering to the said ——— and ——— a short Copy subscribed by me, personally apprehended; and by leaving to the said ——— and ——— an short Copy subscribed by me, within each of their Dwelling-houses, with their Wives or Servants because I could not get them personally apprehended. All which Copies did contain the Day and Date hereof, Witness Names and Designations therein insert, present thereat, and hereto subscribing, before these Witnesses ——— and ———. And,

before the JUSTICIARY COURT. 91

the more Verification hereof, I and the said
Witnesses have subscribed the samen.

J. G. Macer.

A. B. Witness.

F. G. Witness.

*Follows the Form of the Copy given to each
Assizer.*

J. G. Macer to the Justiciary Court,
summon you — to compear before
the Lords Justice-General, Justice-Clerk
and Commissioners of Justiciary, within
the Tolbooth, or Criminal Court-house of
Edinburgh, the — Day of — next
come, in the Hour of Cause, to pass
on the Affize of C. D. Prisoner in the
Tolbooth of Edinburgh, under the Pain of
the hundred Merks. This I give you
on this — Day of —, and —
ar.

Copy to each
of the Assizers.

J. G. Macer.

Follows the Execution against Assizers.

UPON the — Day of —, and —
Year, We Macers of the Justiciary
Court subscribing, summoned, warned, and
charged the Persons after mentioned to
compear before the Lords Justice-General,
Justice-Clerk and Commissioners of Justi-
ciary,

Execution a-
gainst Assizers.

ciary, within the Tolbooth, or Criminal Court-house of *Edinburgh*, the — of — next to come, in the Hour Cause, to pass upon the Affize of C. each under the Pain of One hundred Merks *viz.*

Affize in case
the Party be
a Landed
Man.

Personally apprehended, viz.

G. H. of —
A. B. of —
J. D. of —
J. C. of —
W. B. of —
D. D. of —
J. L. of —
J. C. of —
D. C. of —
W. D. of —
A. B. of —
W. B. of —
A. B. of —
W. C. of —
W. G. of —
W. G. of —
G. W. of —
G. G. of —
H. G. of —
G. B. of —
W. K. of —
P. R. of —
W. G. of —

Copies left at their Dwelling
houses, viz.

H. C. Merchant in *Edinburgh*
W. M. Coppersmith there
W. L. Coppersmith there
N. L. Merchant there
J. L. Merchant there
J. J. Goldsmith there
J. A. Jeweller there
J. P. Merchant there
J. P. Merchant there
J. C. Bookseller there
J. W. Wright there
A. H. Vintner there
H. A. Merchant there
W. C. Baxter there
R. B. Merchant there
G. H. Goldsmith there
D. F. Merchant there
W. H. Wright there
A. D. Jeweller there
A. F. Merchant there
A. B. Merchant there
A. C. Wright there

J. G. Macer

W. G. }
J. L. } Macers.

The Letters,
&c. must be
lodged with
the Clerk be-
fore the Day
of Compear-
ance.

The Criminal Letters being execute
gainst the Prisoner, upon the *inducia leg-
les*; the *Friday* or *Saturday* before the Day
of Compearance, the Lord Advocate,
his Depute, delivers in the Letters, with

the Executions against the Prisoner, Witnesses and Affizers, to the Clerk of Court, in case the Prisoner or his Doer should call for them. And the same must be returned to the Clerk that Day, or upon the Day of Compearance, before the Cause is called.

The Day of Compearance being come, the Court met, and Witnesses and Affizers called, the Clerk inserts the Sederunt of the Judges present in the Book thus;

*Curia Justiciarum S. D. N. Regis, tenta
in prætorio burgi de Edinburgo—
die mensis—, anno Domini—,
per nobilem et potentem Comitem—,
Justiciarium generalem Comitem, et
honorabiles viros—, Justiciarium
Clericum Dominos—et —Com-
missionarios Justiciarum dict. S. D. N.
Regis.*

Sederunt.

Curia legitime affirmata.

The Prisoner being sent for by a Macer of Court attended by a Guard, enters the Pannel; and, Silence being called, the Clerk reads the Indictment, and the Pannel is desired to take notice thereof.---After the Indictment is read, the Preses asks the Pannel, what he has to say to the Libel or Indictment?

Procedure of
the Court.

There is no Difference betwixt his standing mute or denying the Crime in point of
Proce-

1. Parl. 1587.
cap. 87.

What if the
Pannel should
stand mute?

2. Coke 3. inst.
p. 217.

Procedure 1.---For our Law by no means allows to press a Man to Death for his Obstinacy in not answering, which is the Course of proceeding in *England* in Cases of petit Treason and Felony.---But, on the Party's standing mute, in Cases of high Treason, the Judgment is the same without further Trial, as if he had been convicted 2.

If the Prisoner deny the Crime, the Clerk writes in the Book as follows :

Intran.

*C. D. indicted and accused at the Instance of his Majesty's Advocate for his Highness's Interest, as guilty of the Crime of Murder committed by him in Manner mentioned in the Criminal Letters raised against him therea-
nent.*

Then he writes the Advocates Names thus ;

Pursuers.	Procurators in Defence.
Mr. D. F. his Majesty's Ad- vocate.	Mr. R. C. }
Mr. C. E. his Majesty's So- licitor.	Mr. R. D. } Advocates.
Messrs. J. B. and J. F. Ad- vocates.	Mr. A. L. }

Thereafter the Pannel's Advocates plead his Defence *viva voce*, either upon Objections to the Libel or Indictment, or upon the *Relevancy*.

Formerly

Formerly the Advocates for the Prosecu-
 tor and Pannel, were in Use of dictating
 to the Clerk their Defences, Answers, Re-
 plies, Duplies, &c. which was discharged
 by this Act ^w.—And, in Place thereof,
 his Majesty's Advocate, or other Advo-
 cates, or Procurators for the Pannel, were
 ordained to debate the Relevancy *viva voce*;
 —and, after the Debate was ended, the
 Court ordered the King's Advocate, or
 Procurators for the Pursuer, to give in
 their Information in Writing, subscribed
 by him or them within forty eight Hours
 after the said Debate, that the Advocates
 for the Pannel might take it up to see;
 and who were ordered to put in their An-
 swers in Writing, also subscribed by them
 within other forty eight Hours;—which
 Information and Answers were, by the
 Clerk, recorded in the Books of Adjour-
 nal, in Place of the foresaid written Dis-
 pute formerly in Use.—And at advising the
 Information and Answers, if any thing
 was found new on either side, and not ta-
 ken notice off by the other Party, then the
 Court heard the same debated *viva voce*,
 the Clerk minuting, in presence of the Jud-
 ges, what was so further debated, and
 thereafter proceeded to advise the whole,
 which was done with open Doors.

^w Parl. 1695.
 cap. 4.

Manner of
 Procedure on
 the Relevancy
 by this Act.

But, as this Method was found inconve-
 nient and a protracting of Trials, the Court,
 by the late Statute ^x, are impowered, af-
 ter the Debate on the Relevancy, the Mi-
 nutes

Method of
 Procedure by
 the late Act.

^x 20th Geo. II.

minutes whereof to be taken down in Writing, to pronounce their Interlocutor thereon, and to proceed to the Trial, or adjourn to a further Day without Informations by the Parties, as before was always the Rule; and the Pannel or Party under Trial is appointed to give in to the Clerk, the Day before the Trial, in Writing subscribed by him or his Council, an Account of the Facts relating to the Matters charged upon him in the Libel, and briefly to subjoin his Objections or Defences.—And the Court is also empowered by this Act in the Trial of any Crimes or Offences, other than high Treason, to direct Informations to be given in by the Council for the Prosecutor or Defender respectively in any Part of the Trial, where Questions of Difficulty occur, whether after Debate upon the Relevancy, or on the Import of a special Verdict, or on the Degrees of the Punishment, or upon any Matters that shall be alledged for the Pannel before Judgment.

The Benefit
arising from
this Act.

Informations on the Relevancy or Sufficiency of Criminal Libels or Indictments, were frequently most useless, where it was uncontroverted; and, by the former Practice, in such Cases, the Advocates for the Pannel behoved to strain their Invention to find something to be alledged for their Clients against it.—And, in special Verdicts, intricate Questions sometimes occur, which may require a full Discussion before advising the Punishment, the Con-

clusion

usion of our Criminal Libels or Indict-
 ments bearing, for the most part, in gene-
 ral, *the Pains of Law*;—on which account,
 after the Verdict against the Party is given,
 the Punishment comes to be considered,
 and it may be difficult to ascertain the
 kind or Degree of Punishment that ought
 to be inflicted upon the Pannel convicted;
 and consequently, in such and the like Ca-
 ses, it is justly allowed to the Court, to di-
 rect Informations on these Points, as they
 may still do in Matters of Difficulty, touch-
 ing the Relevancy of Criminal Libels or
 indictments in particular Cases as formerly.
 If the Pannel have any legal Objection
 against the Libel or Indictment, his own
 copy, or Execution against himself, or the
 Executions against the Witnesses and Affi-
 ders, such as, his or their being wrong na-
 med and designed, &c. and the Objection
 sustained by the Court, the Diet will be
 asserted against him.—But, if such Obje-
 ctions be sustained, in a Trial upon a Libel,
 or Indictment raised within the forty Days,
 allowed by Law for completing of the Tri-
 al, and that there be so many of these Days
 consumed, as that the Trial cannot be concluded
 within them, then the Diet must be desert-
 ed, and the Pannel set at liberty never to
 be tried for that Crime in Time coming: y:
 that, in case the Objections are over-ruled,
 the Trial proceeds of Course.—All these
 Objections, properly called Dilators, must
 first be proponed before they proceed to

All Dilators
 must be first
 discussed; the
 Consequences
 of these.

y W. III. P. 12
 1701.

N

debate

debate the Relevancy, or else, if the Party allows a Judgment on the Relevancy to pass, he is foreclosed as to the Effect of these Objections, and the Trial will proceed accordingly.

What if 15 of the Affize is not present.

And if, at the Pleading, the Pannel or his Council observe that there is not fifteen of the forty five Affizers present, they may and can object thereto; which, they do, the Court will stop the Pleading and cause call the List of Affizers, and, there be not fifteen present, the Diet continued, and the absent Affizers unlawe in One hundred Merks each.—In all Pleasings in Criminal Pursuits, the Defendant Council is last heard, except in Cases of high Treason ².

² Ch.II. P. 2. c. 16.

After the Debate on the Relevancy, the Court may either proceed to determine the same, or appoint Informations to be given in, as directed by the late Act ^a.

^a 20. Geo.II.

The Pannel may apply for Letters of Exculpation.

If the Pannel is to adduce any Witnesses for his Exculpation, or for proving his Objections and Exceptions against Witnesses or Affizers, &c. then he may apply to the Court for Letters to cite such Witnesses before the Trial, which the Court are always in Use to grant;—and, in case any of the Witnesses at the time be at a Distance, the Court will give a competent Time for executing the Letters;—To which Day so assigned, the Diet is continued.—This Delay being at the Desire of the Pannel, is not to be reckoned

the forty Days, in Terms of the Act ^b.—
And a Copy of the List of such Witnesses
admitted for the Pannel must be given to the
King's Advocate or private Party pro-
secuting, or both, in case they have any
Objections against them ^c.—And an Exe-
cution of Delivery is given by the Executor
for the Pannel's Safety.---If this be forgot,
it will invalidate his Exculpation, and de-
prive him of the Benefit of the same.

^b W. III. P. I.
1701.

^c Regul. 1672.

Follows the Form of Letters of Exculpation.

GEORGE, by the Grace of GOD,
King of Great Britain, France, and
Ireland, Defender of the Faith, to our
Lovits,

Letters of Ex-
culpation.

Macers, Messengers at Arms, Our She-
ffs in that Part conjunctly and severally,
specially constitute, greeting: FORASMUCH-
as it is humbly meant and shown to us,
by our Lovit C. D. Prisoner in the Tol-
booth of *Edinburgh*; THAT WHERE, the
Diet of the Criminal Libel raised at the In-
stance of A. B. with Concourse of W. G.
our Advocate, for our Interest, against the
said C. D. for the Crime of Murder alled-
ged committed by him, in Manner men-
tioned in the Libel, or Indictment raised a-
gainst him thereanent, was, by Our Lords
Justice-General, Justice-Clerk and Com-
missioners of Justiciary continued to the
—Day of——next to come; and the
said

Letters of Ex-
culpation.

said *C. D.* having proponed several relevant Defences for eliding of the said Libel and also having several relevant Exceptions and Objections, competent for him to propone, against the Witnesses and Affizers given him in List, whereof he will be heavily prejudged in respect of the Peremptoriness of Criminal Diets, unless he obtain our Warrant and Diligence for citing Witnesses to prove the same in Manner underwritten. OUR WILL IS HEREFOR, and we charge you strictly, and command, that incontinent thir our Letters seen, ye pass and, in our Name and Authority, summon warn and charge such Witnesses, who best know the Verity of the said Defences, Exceptions and Objections proponed, or to be proponed, by the Complainer, whose Name shall be given you in List subscribed by him, to compear before our said Lords Justice-General, Justice-Clerk and Commissioners of Justiciary, within the Tolbooth or Criminal Court-house of *Edinburgh*, the——Day of——next to come in the Hour of Cause, to bear leal and soothfast Witneffing, in so far as they know, or shall be asked at them anent the said Complainer's Innocence and Exculpation of the Crime libelled against him, ilk Witness under the Pain of One hundred Merks. ACCORDING TO JUSTICE, as ye will answer to us thereupon, &c. GIVEN under our Si-

gnet

met at *Edinburgh*, the — Day of —
and of our Reign the — Year 17—.

*Ex deliberatione Dominorum Commissiona-
riorum Justiciarum.*

J. D. Clerk.

These Letters pass on a Bill signed by
any of the Lords, are signet with the Seal
of Court, and are execute in the same
manner as the Diligence against Witnesses
the Indictment; a Copy of Citation
each of whom, with the Form of the
execution thereon, is insert *p. 41. & seqq.*

Execute in
the same
Manner as
the Letters of
Diligence
were.

*follows the Execution upon Delivery of the
List of the Pannel's Witnesses to the Lord
Advocate, or private Party, or both.*

UPON the — Day of —, 17—
Year, I J. G. Macer to the Justicia-
Court, by virtue of Letters of Exculpati-
on, raised at the Instance of C. D. Prisoner
in the Tolbooth of *Edinburgh*, against Wit-
nesses, for the Alleviation of the Crime al-
leged against him, and proving his Inno-
cence thereanent, in the Terms of the Act
of Parliament, gave in a List of Witnesses
names and Designations, subscribed by the
said C. D. and to be adduced by him in
the said Cause, to W. G. his Majesty's Ad-
vocate, and A. B. private Party concerned,
object against them as they should see
cause. This I did, after the Form and
tenor of the said Letters in all Points by
delivering

Execution up-
on Delivery of
the List of the
Pannel's Wit-
nesses.

delivering to the said *W. G.* his Majesty's Advocate, and *A. B.* private Party concerned, a List of the Names and Designations of the said Witnesses, to be adduced for the said *C. D.* (*personally apprehended*) before these Witnesses, *A. B.* and *D. C.* And, for the more Verification, I and the said Witnesses have subscribed the same.

J. G. Macer.

A. B. Witnesses.

D. C. Witnesses.

In case the Court shall appoint Informations upon the Relevancy to be given in against *a certain Day*, to which they are adjourned, that Day being come, and the Court met, the Pannel is sent for out of Prison, and brought under Guard to the Court-house:—Then the Clerk inserts the Sederunt of the Judges present, as before.

Intran.

*C. D. Prisoner in the Tolbooth of Edinburgh
indicted and accused ut in die præcedenti.*

Procedure of
the Court up-
on the Infor-
mations.

The Cause being called, and the Criminal re-entered the Pannal, the Preses desires the Clerk to read the Libel or Indictment; which being done, he reads the Prosecutor's Information, with the Information or Answers thereto for the Pannel, of the Book; and after all is read, the Preses resumes the Heads of the Information and Answers to the Lords, and desires their Opinion

pinion.---Accordingly each of the Judges deliver their Opinion, and if they are unanimous, or a Plurality, then the Interlocutor on the Relevancy is dictated by the Preses to the Clerk, and wrote in the Book in the Form following :

“ The Lords Justice-General, Justice-
“ Clerk and Commissioners of Justiciary,
“ having considered the Libel pursued at
“ the Instance of *W. G.* his Majesty's Ad-
“ vocate, for his Highness's Interest, a-
“ gainst *C. D.* Pannel, with the foregoing
“ Debate thereupon; THEY FIND, That the
“ Pannel, at the Time and Place libelled, ha-
“ ving, by Premeditation and forethought
“ Felony, with a Poynard or other mor-
“ tal Weapon, wounded the deceas'd *G.*
“ *B.* of which Wound he soon thereafter
“ died, or that the Pannel was Art and Part
“ thereof, *relevant* to infer the Pains of
“ Law. BUT ALLOWS the Pannel to
“ prove all Facts and Circumstances he
“ can, for taking off the aggravating Cir-
“ cumstances of Forethought and Preme-
“ ditation : And also find, That the said
“ Pannel, Time and Place foresaid, ha-
“ ving, with a Poynard or other mortal
“ Weapon, wounded the said *G. B.* of
“ which Wound he soon died, or that the
“ Pannel was Art and Part thereof, *sepa-*
“ *ratim relevant* to infer the Pains of Law.
“ ---AND REPEL the hail Defences pro-
“ poned for the Pannel ; and remit him
“ and

Interlocutor
on the Rele-
vancy.

“and the Indictment, as found relevant,
“to the Knowledge of an Affize.”

C. A. I. P. D.

What if other
Defences be
sustained for
the Pannel.

But if any Defence shall be sustained for
the Pannel, such as, that he was *alibi* the
Time of committing the Fact, it is inserted
in the Interlocutor thus: — “AND sus-
“TAIN the Defence proponed for the
“Pannel, of his being *alibi* the Time li-
“belled, *relevant* to elide the Libel: AND
“REPEL the haill other Defences propo-
“ned for the Pannel; and remit the Li-
“bel and Defence as found relevant, to
“the Knowledge of an Affize.”

Pannels are
allowed to
prove the
same by way
of Exculpation.

The Pannel is allowed to prove these De-
fences by way of Exculpation, and a com-
petent Time is craved for adducing his
Witnesses, in case they be at any consi-
derable Distance; which the Judges gene-
rally allow.----And if the Pannel has not
served Letters of Intimation, they are re-
stricted to no Time; but if he has served
Letters, then any Delay in the Prosecuti-
on being at his own Request, stops the
running of the Days in such Letters; up-
on this the Court delays taking the Proof
against the Pannel, till the Day of Com-
pearance of his Witnesses in the Exculpa-
tion; to which Time the Diet is likewise
continued.

Interlocutors
on the Rele-
vancy of old.

Formerly Interlocutors on the Relevan-
cy were special, finding such and such
Points *relevant* to infer the Pain of Death,
and

and such and such Points *relevant* to infer an arbitrary Punishment:—But now Interlocutors are ordinarily general, finding *the Libel relevant to infer the Pains of Law*. --- And Art and Part libelled in Criminal Libels, are declared to be *relevant* against all Exceptions^d.

^d Ja. VI. 12.
Parl. 12.
c. 151.

The Day to which the Court is adjourned being come, the Clerk again inserts the Roderunt of the Judges present in the Book, as formerly.

Intran.

D. indicted and accused ut in die præcedenti.

*Affine chosen
and sworn*

The Letters of Exculpation, with the Executions against the Witnesses cited, and Execution of the List of them delivered to the Lord Advocate, or private Party concerned, being reported to the Clerk,—if the Witnesses are not present, the Pannel, or his Council, may crave a second Diligence against them, which is in the Form of a Caption, for apprehending and incarcerating them, till they find Caution to appear and bear Faith; and is ordinarily granted in such Cases.---But if they be attending, and the Prosecutor ready to insist, then the Clerk calls over the List of the Witnesses, both for the Prosecutor and Pannel, and, if all are present, they are put in a Room by themselves, and no body is allowed to speak to them, till they are examined.

Prosecutor or
Pannel's Wit-
nesses, if ab-
sent, will be
unlawed.

O

amined.

• Ja. VI.
Parl 13.
c. 166.

Form of the
Unlaw.

amined.—But if any of the Witnesses be absent, the Prosecutor may crave them to be unlawed, as in the Statute^e; which is accordingly granted; and the Clerk pronounces the same to the Macer, who repeats it thus:

*The Court shows for Law, That —
and — are in an Unlaw and Amercement of One hundred Merks each, for not appearing to bear Witness in this Trial, they who were lawfully cited for that Effect.*

C. A. I. P. D.

Affize chosen
and sworn,
&c.

Thereafter the Preses desires the Clerk to call over the List of Affizers, which being done, and they appearing, the Preses marks out fifteen of the forty five that were summoned, to pass upon the Panel Affize.—Then the Clerk names them five by five, and they turning to the Panel the Preses asks him, if he has any Objection why these five may not pass upon his Affize? If he has none, the Clerk administers the Oath to them, as on p. 48 and so on to the rest, till the whole fifteen are sworn.—And if any of the five are absent before choosing, they are unlawed, as on p. 52.—But, if the Panel be a landed Gentleman, and no competent Number of landed Men then present to pass upon his Affize, he may object thereto, and have the Diet deferred, whether the Crime be capital, and Letters of Intimation served or not.—And in

he, relying on his Innocence, is willing the Trial should proceed, then he passes from his Privilege, and signs his Consent in the Book.---After which the Clerk places the Assizers Names as on p. 50. and writes what follows:---*The above Assize being all lawfully sworn, and no Objection of the Law to the contrary, the Pursuer for Probation adduces the following Witnesses, &c.*

Witnesses by our Law must be received in Presence of the Pannel and Assize, that the Pannel's Presence may over-awe the Deponer, and that the Assize may judge by the Witness's Countenance, Gestures and Assurances, how far he should be believed ^f.---And Advocates are to be present, that they may cross-interrogate the Witnesses; which is more equitable than the Custom of other Nations, who allow neither Advocate nor Party to be present while the Witnesses are deponing ^g.---And in this we agree with the Civil Law ^h.---Hence it is, that extrajudicial Confessions are never received as Evidence, except where they are adminiculate by the Testimonies of the Witnesses led in Presence of the Assize.

The Jury being sworn, and the Witnesses called, the Judges cannot go off the Bench, at least a *Quorum* must remain, till all the Witnesses be examined, or so many as the Prosecutor inclines to make use of in the Trial.---And in case two or more Witnesses concur upon the different Points of

Probation must be in Presence of the Assize, &c.

^f Ja. VI.
Parl. 11.
c. 90.

^g Gomer. de delict. c. 1.
Num. 65.
^h L. custod. ff. de publ. jud.

What if there be a *plenary* Probation,

of the Libel, whereby the Probation becomes *plenary*, and the Lord Advocate is willing to pass from the rest, then the Court dismisses them. ---- If there be an Exculpation in the Field, wherein any of the Prosecutor's Witnesses are cited by the Pannel for proving his Allegations, they must be then examined. --- But if they are not summoned by the Pannel, he will not be allowed to interrogate them on Points tending to his Exculpation.

Or
Objections
offered a-
gainst the
Witnesses.

And, in case of no *plenary* Probation by two or more Witnesses, but the Prosecutor inclining to have the whole examined, then they are called in one by one, and appearing at the Bar before the Pannel, the Judge Examinator desires the Witness to turn about to the Pannel, and asks him, if he has any Objection why he may not be received as a Witness against him? ---- If he has any Objection, he or his Council propound the same; and if the Objection is sustained *relevant* and *proven*, the Witness will be rejected; but if any Doubt remains as to the Legality of the Objection, the Witness is received *cum nota*, that is to say, the Jury are to consider what Stress is to be laid on the Evidence at returning the Verdict, or what Degree of Credit such Evidence merits. ---- This seldom occurs except in Cases where there are a Penury of Witnesses. ---- And all Objections against the Witnesses must be instantly proven, or else they will be repelled.

By the late Statute, it is enacted, "That from and after the 24th June, 1748, in all Trials or Prosecutions within Scotland, for the Crimes of Theft of Cattle, or the masterful Taking away or detaining the same, it shall not be allowed to be a good Objection to any Witness produced for proving such Libel or Indictment, that he was himself *particeps* or *socius Criminis*, nor shall the Evidence given by such Witness be made use of against himself, nor shall he be liable to be prosecuted for his Accession to the Offence, which he shall, as a Witness give Evidence that the same was committed by the Prisoner or Pannel, in whose Trial he shall be so adduced, or that such Prisoner or Pannel was Art and Part thereof."—And *socii Criminis* will likewise be received as Witnesses in a Trial for *Falshood*, because, without these, many times that Crime could not be proved ^k.

The Lords examine the Witnesses *per olices*, which is done in the following Manner:—The Witness, holding up his Right-hand, repeats the Words after the Lord Examiner thus:—*By God himself, and as you shall answer to God at the Great Day of Judgment, you shall declare the Truth, and nothing but the Truth, in so far as you know, or shall be asked at you.*—After the Witness is sworn, the Judge purges him of partial Council; that is to say, If he bears any Ill-will, Malice, or Prejudice against the Pannel, or has

i 21. Geo. II.
In what Cases
socii Criminis
are admitted
as Evidences.

k Mack. Crim.
Tit. 26. Sect.
10.

Manner of
Procedure in
the Examination
of the
Witnesses.

has got any good Deed, or Promise of good Deed or Reward, to depose or swear against him; or, if he has been directed, informed, or told what he was to swear, or has directed or advised the Prosecution, (any of which will set him aside); but, if the Witness shall swear *negative* as to these, then the Judge examines him upon his Knowledge as to the Points libelled against the Pannel.—And the Clerk, for Preamble, writes in the Book thus:—*G. H. aged—Years or thereby, married, solemnly sworn, purged of Malice, Prejudice, and partial Council, examined upon the Points of the Libel, and interrogate, depones* (here the Witness's Deposition is insert) and closes with these Words, *Causa Scientiæ patet, and this is Truth, as he shall answer to God.*

G. H.

C. A.

The Depositions are signed by the Witnesses, and the Lord Examiner.—And, in case the Witness cannot write, the Clerk adds, *and depones he cannot write*,—which the Lord Examiner signs.—After emitting of the Oath, the same is read over by the Clerk to the Witness, to see if it be what he has deposed; and so on to the rest, till all be examined, at least so many of them as the Prosecutor intends to make use of.

Affizers may
interrogate the
Witnesses.

Any of the Affizers may propound Questions to the Lords, to be put to the Witnesses

nesses, in relation to the Facts contained in the Indictment.—And Sir Geo. Mackenzie observes, That all Probation in Criminal Causes, should be very convincing and clear, because of the Severity of the Conclusion. But yet Witnesses (says he) otherwise *inhabile*, are sometimes allowed, because of the Danger of the Commonwealth, as in *Treason*, or because the Crime cannot be otherwise proven, as in *Hame-sucken*¹.

The Witnesses Expences are paid by the publick or private Prosecutor; each Horseman at sixteen Pence, and each Footman at eight Pence *per Day*.—And, if the Pannel is allowed an Exculpation, and Witnesses summoned, and appearing, (whether they are examined or not) he pays in the same Manner as the Prosecutor does.

The Probation being concluded, the Lord Advocate or the Council for the Prosecutor, sums up the Evidence against the Pannel, and enforces the same by Arguments to the Jury.—And, on the other hand, the Council for the Pannel make answer upon the Lameness of the Proof against him, &c. or, if exculpatory Evidence has been adduced by the Pannel, his Council endeavour to support such Proof by Arguments, so far as the same will serve to elide the Libel.—After which, the Court ordain the Affize to inclose and return their Verdict next Day at a certain Hour to be appointed by the Court; but, before they are inclosed,

Probation
ought to be
clear.

¹ Mack. Inst.
Tit. 4.
(Crimes.)

Expences to
Witnesses.

The Proce-
dure of the
Court after
Probation.

fed, the Clerk leaves with them a *Formula* for their Direction, and, whatever Necessaries are wanted, due Care is taken to provide these, as I formerly mentioned.

After the Macer incloses the Jury, none of them must look over a Window, or speak to any Person before they are agreed to their Verdict; which if they do, and can be proven, it is sufficient Ground for an Acquittal in favours of the Pannel.

The Assize being thus inclosed, and having chosen a Chancellor and Clerk of their own Number, they proceed to consider the Evidence before them, and unanimously, or by Plurality of Voices, agree, That the Libel or Indictment is, *proven or not proven*, or the Pannel *guilty or not guilty*, or that such and such Things are *proven or not*; and so make their Verdict accordingly.—The Chancellor marking on the same Paper upon which the Verdict is wrote, what Way every individual Person upon the Assize does vote, whether condemning or absolving.—And the same, with the Verdict when signed by the Chancellor and Clerk, is to be closed and sealed with the Chancellor's Seal, and kept by him unopened till the Meeting of the Court, as the Law directs.

Assizers are allowed to speak to Judges or Advocates, but not to make any Address to them after Inclosure.—And, although the Clerk, in former Times, was allowed to sit with the Assize, after they were inclosed,

¶ Sect. 5.

¶ Parl. 1537.
c. 92.

And of the Jury after they are inclosed.

° Cha. II.
Parl. 2. c. 16.

Privilege of
Assizers, &c.

closed, because they, being oft ignorant and unacquainted with the Forms and Procedure of the Court, should have some Person to regulate them, and none so fit to do it as the Clerk; yet that was afterwards discharged as suspicious, and of dangerous consequence ^p —. Hence the Practice of leaving a *Formula* with the Jury for their Direction, was introduced.

^p Regul. 1672

Of old, before inclosing the Jury, the Lord Advocate or Prosecutor used to protest for an Affize of Error against the Inquest, if they assailed. — This *great Affize*, as it was called, consisted of twenty five noble Persons, though afterwards, in Practice, landed Men were sustained ^q: Who were to inquire, if the Jurors were guilty of wilful Error, in their Verdict; and the punishment was Escheat of Moveables, Imprisonment ^r. But the Pannel, who was acquitted, remained so, and could not be brought upon a new Trial. — Affizes of Error were justly complained of as a Grievance at the Revolution ^s, and are now obsolete. — By such Affizes, Persons who attended Trials as Jurors, were greatly put in Fear of being punished, instead of being rewarded for their Trouble; and the Subjects were unsecure in their Lives and Liberties, by the Prosecutors, in many Cases, threatening the Jury with an Affize of Error if they acquitted the Pannel by their Verdict; and, by abolishing these Affizes, such Fears are removed,

Affizes of Error of old.

^q Act of Sed.
7th June 1591.

^r Reg. Maj. 1.
1. c. 14. ratified
Parl. 1475.
c. 63.

^s Conv. of Estates 1684.

ved, and People's Rights and Liberties are delivered from such Danger.

Sederunt.

Next Day the Court being met at the Hour to which they were adjourned, and the Prisoner being sent for, and entering the Pannal, the Clerk inserts the Sederunt of the Judges present, as before, and then writes ;

Intran.

C. D. Indicted and accused, ut in die precedenti.

Procedure of
the Court up-
on the Ver-
dict.

Thereafter the Clerk calls over the Names of the fifteen Affizers (and if any are absent they are unawed, as in *p. 49.*).—But, if all the Affize are present, the Preses of the Court calls for the Verdict from the Jury, and the Chancellor delivers it accordingly sealed.—Thereafter the Lords open the Verdict, and read it, and, after Reading, give it to the Clerk to record in the Book ; who, after Recording, reads the same to the Pannel, and, by Order of the Court, seals it up again with the Chancellor or Clerk to the Jury their Seals, or with the Seal of Court, never to be opened without a *Quorum* of the Lords present, or by special Warrant for that Purpose with Certification, if the Clerk, who has the Keeping of the said Verdict, do make open, or allow the same to be made open without Warrant, he is to be deprived of his

his Office, and otherwise punished as the Judges shall think fit.

If the Verdict be pronounced, finding the Libel or Indictment *not proven*, or the Pannel *not guilty*, then the Court assoilzies the Pannel, and dismisses him from the Bar.—Which Judgment, after being recorded, the Clerk repeats to the Macer thus ;

“ The Lord Justice-Clerk and Commissioners of Justiciary, in respect of the foregoing Verdict of Affize, ASSOILZIE the said *C. D.* Pannel, and dismiss him from the Bar : ” —Whereupon he takes Instruments.

But, if it be a special Verdict, finding such and such Points *proven*, and all those not amounting to a full Proof of the Libel, the Court are to consider the Effect of such Verdict, and to inflict Punishment accordingly.

Formerly, if there was no Alternative in the Interlocutor upon the Relevancy against the Pannel, finding such and such Points *relevant* to infer an arbitrary Punishment, such special Verdicts had no Effect, and the Pannel was assoilzied.—But now the Interlocutors are general, finding the Libel or Indictment *relevant to infer the Pains of Law*.—So that whatever Way the Verdict be pronounced, if any particular Points of the Libel be thereby found proven, the Court reserve Power to themselves to order

What if the Verdict be returned, finding the Pannel not guilty.

Or a special Verdict be returned.

The Effect of special Verdicts of old.

order the Punishment accordingly; and the Pannel is seldom affoizied (except upon a Verdict finding in general the Libel, or Indictment, *not proven*, or the Pannel *not guilty*) without some Punishment inflicted. And as the Jury is uncertain, whether the Punishment will be capital or not, they ought therefore to be the more cautious in giving their Verdict, and should have a special Regard to the Quality of the Proof and Witnesses adduced before them. And before they are inclosed they should endeavour to be satisfied of any Doubt, and propone the same openly in face of Judgment, as our Law directs †.

† Ja. VI.
Parl. II.
c. 91.

The Effect of
a Verdict find-
ing in general
the Libel *pro-
ven*, or the
Pannel *guilty*.

If the Verdict is in general, finding the Libel or Indictment *proven*, or the Pannel *guilty*, then the Lords pronounce Sentence according to Law, “and ordain the Pannel to be taken, against a certain Day, “to the Grass-market of *Edinburgh*, (or “to any other Place to be named in the Sentence) and there to be hanged by the Neck on a Gibbet until he be dead, “and all his moveable Goods and Gear “to be escheat and in-brought for his Majesty’s Use.”---Which Sentence is recorded in the Record of Court, and signed by the Judges, and is read by the Clerk to the Dempster, who pronounces the same to the Pannel.---After which the Pannel is carried back to Prison, and a Copy of the Sentence signed by the Judges is made out.

out, and given to the Magistrates of *Edinburgh*, with a Warrant for putting the same in Execution, as they will be answerable at their highest Peril.---The several Forms of which I have inserted at full Length in another Place ^u.

^u Sect. 5.

S E C T. VII.

Concerning the Manner of raising and executing Criminal Letters against Persons for Crimes bailable; with the several Forms relating thereto, and of the Trial following thereon.

WHEN an Information is offered to any of the Lords of Justiciary, by a private Party, against Persons guilty of Bloodwitt, Battery, or any other Crime that is bailable, Warrant is thereupon granted for apprehending and imprisoning the Delinquents; who, upon their being apprehended, and in the Macer or Messenger's Custody, or imprisoned, after getting a Copy of the Warrant of Commitment signed by the Keeper, if in Prison, or by the Macer or Messenger if in Custody, may apply by Petition to any of the Lords of Justiciary, in the Form following.

Persons imprisoned for Crimes not capital, may apply to be set at Liberty, upon finding Bail to appear within six Months,

Unte

*Unto the Right Honourable the Lord Justice
Clerk,*

The PETITION of ----, ----, ----
---- and ---- Prisoners in the Tol
booth of ----,

Humbly sheweth,

Form of the
Application.

THAT where we are imprisoned by
Warrant issued by your Lordship up
on an Information given in by *A. B.* against
us, for our alledged beating and bruising
of him to the Effusion of his Blood, in
manner mentioned in the said Warrant, and
the attested Double thereof, under the
Hand of the Keeper of the Prison, here
with produced, doth testify.---And we be
ing willing to find sufficient Bail to an
swer for the Crime alledged against us, con
form to Law :

*May it therefore please your Lordship to
cognosce, whether the said Crime, for
which we are imprisoned, be bailable or
not ; and, if bailable, to modify the Sum
for which your Petitioners are to find
Bail; and, upon finding the same, to or
dain us to be set at Liberty.*

According to Justice, &c.

The Petitioners sign this Petition, or
Lawyer for them.

The

The Deliverance wrote by the Clerk on the Petition, is as follows :

“The Lord Justice-Clerk, having considered this Petition, with the Copy of the Warrant of Commitment under the Hand of the Keeper of the Prison, therewith produced, FINDS the Crime for which the Petitioners are chargedailable ; AND ORDAINS them to find Caution acted in the Books of Adjournal, to answer to any Libel or Complaint that shall be exhibited against them, within the Space of six Months, next after the Date of the Bond of Caution, to be given by them for that Effect, under the Penalty of _____ ; and, upon finding such Caution, ORDAINS them to be set at Liberty.”

Deliverance thereon.

follows the Bond of Caution, taken by the Clerk in terms of the above Interlocutor.

WE _____, _____ and _____, as Principals, and _____ as Cautioner, and and oblige us, conjunctly and severally, our Heirs, Executors and Successors, acted in the Books of Adjournal, That we, the said _____, _____ and _____ shall appear before the Lords Justice-General, Justice-Clerk and Commissioners of Justiciary, and answer to any Libel or Complaint, that shall be exhibited against us, alledged accessory to, and being guilty, Actors,

Form of the Bail-bond.

Actors, Art and Part, of a Bloodwitt or Battery committed upon *A. B.* and that at any time and place we shall be lawfully cited to for that Effect, within the Space of six Months from the Date hereof, under the Penalty of ———; and that in Obedience and conform to an Interdictor pronounced by the Lord Justice Clerk, upon a Petition presented by us, on this Date, to his Lordship thereanent; and we, the said ———, ——— and ——— bind and oblige us and our foresaids, by warrant, free, relieve, and skaithless keep our said Cautioner, of his Cautionry above written, and of all Cost, Skaith, Damages and Expences, he or his foresaids may happen to sustain therethrough, &c.

Procedure
when the
Party-prose-
cutor insists
within the six
Months.

If the private Party intends to prosecute the Complaint, then a *Memorandum* for drawing a Bill for Criminal Letters, made out by his Majesty's Advocate, or his Deputes. — And the Bill being framed in terms of the *Memorandum*, his Majesty's Advocate grants his Concurrence thereto and signs the same, or the Person who is appointed by him for that Purpose, writes on the Bill thus: — *Edinburgh, the — Day of —, Concurrence granted for his Majesty's Advocate*; — and signs the same. — This Concurrence must be had before the Bill for the Letters be presented to be past, and pays of Dues *Eleven Merks*. — The Bill is, for the most part, signed by a

Lawyer

lawyer; but if his Majesty's Advocate frame the same, and sign it, his signing is sufficient for Concurrence.—After Concurrence is granted, the Clerk writes on the Back of the Bill thus:—*Apud Edinburgum* — *die mensis* — *anno Domini* — *fiat ut petitur to the* — *Day of* — next to come, which is signed by one Lord;— and the Clerk when he receives the Caution signs beneath, and adds, *Soverty found*.— A List of forty five Assizers is made out, and presented with the Bill; which List must be signed by the whole Lords, or a *Quorum* of them.

Before expeding the Criminal Letters, the Party-prosecutor must find Caution for reporting the Letters duly execute against the Day of Compearance therein mentioned; and a Bond of Caution is wrote in a Book kept by the Clerk for that Purpose, of the Tenor following:

Caution must be found by the private Party for reporting the Criminal Letters.

“*Edinburgh*, the — Day of —, 17— Years, THE SAID DAY compear- ed *A. B.* as Principal, and *J. G.* as Cau- tioner, and became enacted, bound and obliged, conjunctly and severally, their Heirs, Executors and Successors, acted in the Books of Adjournal, that the said *A. B.* shall report the Criminal Letters duly execute and indorsed, and insist in the Pursuit thereof, purchased at his In- stance, and at the Instance of *W. G.* his Majesty's Advocate, for his Highness's
Q “ Interest,

Form of the Bond of Cau- tion.

“ Interest, and take Soverty of _____ and
 “ _____, that they shall compear be
 “ fore the Lords Justice-General, Justice
 “ Clerk and Commissioners of Justiciary
 “ within the Tolbooth or Criminal Court
 “ house of *Edinburgh*, the ---- Day of ----
 “ next to come, in the Hour of Cause, there
 “ to underly the Law for the Crime of
 “ Bloodwitt or Battery, committed by them
 “ in Manner mentioned in the Criminal
 “ Letters raised against them thereanent
 “ and that under the Penalty contained in
 “ the Acts of Parliament; and the said Act
 “ B. became enacted, bound and obliged
 “ his Heirs, Executors and Successors, for
 “ his Cautioner's Relief in the Premises.
 Which is subscribed by the Parties.

*Thereafter the Criminal Letters are expedited in
 the Form following :*

Criminal
Letters.

GEOERGE, by the Grace of GOD
 King of *Great Britain, France, and*
Ireland, Defender of the Faith, to our
 Lovits,
 Macers, Messengers at Arms, Our Sher-
 riffs in that Part conjunctly and severally
 specially constitute, greeting: FORASMUCH
 As it is humbly meaned and complained
 to Us, by our Lovit *A. B.* of _____, with
 Concourse of *W. G.* Esq; Our Advocate
 for Our Interest, upon _____, _____ and
 _____; THAT WHERE, by the Laws
 this and all other well governed Realms

the violent invading and attacking any of
Our Lieges with Stones, Staves, and other
such Weapons, and the beating, bruising,
and wounding of them, to the Effusion of
their Blood, and most imminent Danger of
their Lives, without any Cause or Provoca-
tion, are Crimes of a high Nature, and
severely punishable; and are the more ag-
gravated when done and committed un-
der Cloud of Night, on the High-street of
any Town or Village, being a Place of
great Commerce, and to which the Lieges
resort in great Numbers; and therefore is
the more immediately under the Protecti-
on of the Law, and ought to be rendered
the more secure; and is still the more odi-
ous, when committed by a Number of
Persons, assembled together against a single
Man, and when persisted in, notwithstand-
ing of his crying for Mercy, when help-
less and alone amongst them: YET TRUE
IT IS, AND OF VERITY, that the hail
Persons above complained upon, shaking
off all Fear of God, and Regard to Our
Laws, are all, and each of them, or one
or other of them, guilty, Actors, Art and
Part of the foresaid Crimes: IN SO FAR
As, upon the — Day of —, 17—
Years, about the Hours of — at Night,
or one or other of the Days of the said
Month, the said *A. B.* walking along the
Street of the Town of —, with a Gentle-
man in Company with him and his Ser-
vant, and another carrying a Lanthorn
before

Criminal
Letters.

before him, in a peaceable Manner, he was assaulted and invaded, without any just Provocation, by the said Persons above complained upon, or one or other of them, with large Staves, whereby, having beat off the other Persons who were along with the said *A. B.* broke the Lanthorn and put out the Light that was carried before him, they barbarously bruised and wounded him with Stones, Staves, or other Weapons, and persisted thus cruelly to use him, notwithstanding of his crying aloud for Mercy, while, in the mean time they were uttering execrable Oaths, and crying, *No Mercy, you Dog, you shall die like a Dog*, or Words to that Purpose; and particularly they wounded him in the Forehead with a Stone, or other Weapon, so that as a Part of his Skull was broken, to the great Effusion of his Blood, and most imminent Danger of his Life, and left him wallowing in his Blood, and in a miserable Condition, unable to assist himself until, by the Charity of others moved with Compassion, he was carried to a neighbouring House, where his Wounds were panced, which appeared to the most skilful Persons so dangerous, that, for some Days, even his Life was despaired of; and least, the Persons above complained upon having met with the said *A. B.* on the Street of ———, after some high Words had passed amongst them, went on with their Lanthorn, and, having turned back

Order

Orders were immediately given to the Criminal
servant who carried the Lanthorn before Letters.
them, to retire and go off, and then a
great Volly of Stones were thrown towards
the Place, where the said Complainer was
standing on the Street as aforesaid, and
hereafter a great many unmerciful Strokes
were heard or seen to be given to him; and,
immediately thereafter, the said *A. B.* was
found wounded, bleeding, and in the mise-
rable Condition above set forth; and the Per-
sons above complained upon were seen reti-
ng from the above Place, laughing, and
wishing the right Person might have been
dead; and the next Day, they fled and ab-
sconded, taking thereby Guilt upon them.
AT LEAST, the Persons above complain-
ed upon, or one or other of them, were
the Art and Part in the Wounding, Beating,
and Bruising aforesaid: WHICH Facts,
the Part thereof, or their being Art and
Part of the foresaid Crimes, being found
proven by the Verdict of an Assize, before
our Lords Justice-General, Justice-Clerk
and Commissioners of Justiciary, they and
each of them ought to be punished with
the Pains of Law, and decerned to pay
some Sum of—— in Name of Damages
; and Expences to the said Complainers, to
the Example and Terror of others to com-
mit the like in Time coming. OUR WILL
HEREFORE, and we charge you strictly,
with command, that, incontinent thir our
Letters seen, ye pass, and, in Our Name
and

Criminal
Letters.

and Authority, command and charge the said ———, and hail other Persons above complained upon, to compear, and to come and find sufficient Caution and Soveryty acted in the Books of Adjournal, that they shall compear before our Lords Justice-General, Justice-Clerk and Commissioners of Justiciary, within the Tolbooth or Criminal Court-house of *Edinburgh*, the ——— Day of ——— next to come, in the Hour of Cause, there to underly the Law for the Crimes above mentioned; and that under the Pains contained in the Acts of Parliament *; and that ye charge them personally if they can be apprehended, and failing thereof, at their Dwelling-houses, and, by open Proclamation, at the Market-cross of the Head-burgh of the Shire, Stewarty, or other Jurisdiction where they dwell †, to come and find the said Caution and Soveryty acted in Manner foresaid, within ——— Days next after they be charged by you thereto, under the Pain of Rebellion, and putting of them to our Horn which Space being bygone, and the said Soveryty not found, nor no Intimation made by them to you of the finding thereof, That, incontinent thereafter, ye denounce

* This is insert in the Letters, in case the Delinquents are absconded, or not in Custody at the Time.

† In case the Criminals are furth of the Kingdom the Bill and Letters must contain a Warrant for citing them at the Market-cross of *Edinburgh*, Pier and Shore of *Leith* upon 60 Days Charge.

Criminal
Letters.

ounce them our Rebels, and put them to
our Horn; escheat, and in-bring all their
moveable Goods and Gear to our Use, for
their Contempt and Disobedience; and
that ye, within fifteen Days thereafter, cause
register thir our Letters, with the Execu-
tions thereof, in our Books of Adjourn-
ment, conform to the Act of Parliament made
thereanent; and, if they come and find the
said Caution, (Intimation always being
made by them to you of the finding there-
of), that ye summon an Assize hereto, not
exceeding the Number of forty five Persons,
together with such Witnesses who best
know the Verity of the Premises, whose
Names shall be given you in List subscribed
by the said Complainers, or either of them,
to compear before our said Lords, Day
and Place foresaid; the said Persons of In-
quest to pass upon their Assize, and the
said Witnesses to bear leal and sooth-fast
Witnessing, in so far as they know or shall
be asked at them, each Person under the
Pain of One hundred Merks. ACCORDING
to JUSTICE, as ye will answer to us there-
upon: The which to do, we commit to you,
conjunctly and severally, our full Power,
by thir our Letters, delivering them by
you, duly execute and indorsed again to the
bearer. GIVEN under our Signet at Edin-
burgh, the——Day of——and of Our
Reign the——Year 17.——

*Ex deliberatione Dominorum Commissiona-
riorum Justiciarum. J. D. Clerk.*

If

What, if Writs
are libelled
on.

^w Ja. VI. Parl.
6. c. 76.

In what Time
Parties char-
ged, are to find
Caution.

^x Parl. 1685.
c. 43.

The Letters
must be exe-
cute by a Ma-
cer or Messen-
ger.

Manner of
executing
them.

If Writs are libelled on, Copies are either made out and given to the Criminals or they are referred to as lying in the Clerk's Hands, where they must be lodged, that the Parties may have an Opportunity of seeing the same.—And Criminal Letters must not be direct against Complices in general; but the particular Crime of every Defender should be expressed ^w.

The Charge on these Letters to find Caution, are upon six Days against those on the *South Side of Tay*, and fifteen against Parties on the *North Side* thereof.—But Persons living in the *Orkney Islands* must be charged upon 40 Days ^x; and all Parties furth of the Kingdom upon 60 Days.

After the Letters are expedited, the private Party employs a Macer or Messenger to execute the same against the Criminals, which is done after the following Manner: *viz.* the Executor copies the Letters verbatim, and thereafter adds,—*Follows the List of Assizers Names and Designations that are to pass upon your Assize*; then he inserts the Assizers Names and Designations with the Lords Subscriptions to the List; and thereafter adds,—*Follows the List of the Witnesses Names and Designations that are to be adduced against you*;—and then he inserts the same with the Person's Subscription to the List:—After all which, the Macer or Messenger, Executor of the Letters, writes a short Copy subjoined by Way of Charge.

to the Criminal, after this or the like Manner, viz.

J. G. Macer to the Justiciary Court, by virtue of Criminal Letters, raised at the instance of *A. B.* with Concourse of *W. G.* Esq; his Majesty's Advocate, for his Highness's Interest, against *A. C.* and others, in his Majesty's Name and Authority, command and charge you the said *A. C.* to compear, and to come and find sufficient Caution and Soverty, acted in the Books of Adjournal, that you shall compear before the Lords Justice-General, Justice-Clerk and Commissioners of Justiciary, within the Tolbooth or Criminal Court-house of *Edinburgh*, the——Day of——next to come, in the Hour of Cause, there to undergo the Law, for the Crimes mentioned in the said Criminal Letters, and that under the Pains contained in the Acts of Parliament; and that you come and find the said Caution and Soverty acted in Manner foregoing, within——Days next after this my Charge, under the Pain of Rebellion and putting of you to the Horn, with Certification, conform to the principal Letters, which are dated and signet at *Edinburgh*, the——Day of——; of the which principal Criminal Letters, with a List of the Affizers Names and Designations that are to pass upon your Affize, and a List of the Witnesses Names and Designations that are to be adduced against you, I herewith give

R

you

Copy of Citation to the Criminals.

you an just and exact Copy upon this—
Day of ——— 17—— Years, before these
Witnesses ——— and ———.

*Ex deliberatione Dominorum Commissiona-
riorum Justitiarum.*

J. G. Macer

What if the
Criminals can-
not be perso-
nally appre-
hended.

7 Ja. VI. Parl.
11. c. 85.

Such of the Criminals as cannot be per-
sonally apprehended, the Executor leave
a full Copy of the Letters, with Lists of
Affizers and Witnesses Names and Desi-
gnations, and a short Copy by way of
Charge, subscribed by him subjoined, at
their respective Dwelling-places; and im-
mediately thereafter, goes to the Market-
cross of the Head-burgh of the Shire
Stewarty, or other Jurisdiction within
which the Criminals dwell or reside; and
there leaves another full Double, with a
short Copy by way of Charge, subscribed
by him, thereto subjoined, at and upon the
said Market-cross, because of their not
being personally apprehended, in terms of
the Act.—This being done, the Executor
returns his Executions against the Crimi-
nals in the following Manner, viz.

*Execution against Criminals personally appre-
hended.*

Execution a-
gainst Crimi-
nals personal-
ly apprehend-
ed.

UPON the ——— Day of ———, 17—
Years, I J. G. Macer to the Justitia-
ry-court past at command of Criminal
Letters raised at the Instance of A. B. with
Concourse

Concourse of *W. G.* his Majesty's Advocate,
for his Highness's Interest, and, by virtue
hereof, in his Majesty's Name and Autho-
rity, commanded and charged——and
——to compear, and come, and find
sufficient Caution and Soverty, acted in the
Books of Adjournal, that they shall com-
pear before the Lords Justice-General, Ju-
stice-Clerk and Commissioners of Justiciary,
within the Tolbooth or Criminal Court-
house of *Edinburgh*, the——Day of——
next to come, in the Hour of Cause, there
to underly the Law for the Crimes within
mentioned, and that, within the Space,
under the Pains, and made Certification as
within express'd. This I did, after the
Form and Tenor of the said Criminal Let-
ters in all Points, which are dated and si-
gnet at *Edinburgh* the ——Day of——,
by delivering to the said—, --- and ---,
and each of them a full Double of the said
letters, with a List of the Affizers Names
and Designations that are to pass upon their
Affize, and a List of the Witnesses Names
and Designations that are to be adduced a-
gainst them, with a short Copy by way of
Charge subjoined thereto, subscribed by me,
all personally apprehended, upon the said---
Day of --- and Year foresaid. Which
Copies did bear the Day and Date hereof,
Witnesses Names and Designations therein
insert, present thereat, and hereto subscri-
bing, viz.---and—. And, for the more Ve-
rification

Execution a-
gainst Crimi-
nals personal-
ly apprehend-
ed.

rification hereof, I and the said Witnesses have subscribed the same.

A. B. Witness.

J. G. Macer.

C. D. Witness.

Execution against Criminals who are not personally apprehended,

Execution against Criminals not personally apprehended.

UPON the — Day of — 17 —
Years, I *J. G. Macer* to the Justiciary Court, past at Command of Criminal Letters, raised at the Instance of *A. B.* with Concourse of *W. G.* his Majesty's Advocate, for his Highness's Interest, and by virtue thereof, in his Majesty's Name and Authority, commanded and charged —, —and — to compear, and to come and find sufficient Caution and Soverty, acted in the Books of Adjournal, that they shall compear before the Lords Justice-General, Justice-Clerk and Commissioners of Justiciary, within the Tolbooth or Criminal Court-house of *Edinburgh*, the — Day of — next to come, in the Hour of Cause, there to underly the Law for the Crimes within mentioned, and that, within the Space, under the Pains, and made Certification, as is within express'd. This I did after the Form and Tenor of the said Criminal Letters, in all Points, which are dated and signet at *Edinburgh*, the — Day of —, by leaving a full Double of the said Letters, with a List of the Affizers Names and Designations that are to pass upon

upon their Affize, and a List of the Wit-
nesses Names and Designations that are to
be adduced against them, with a short Co-
py by way of Charge subjoined thereto,
subscribed by me, upon the said——Day
of——, to the said——, —and——, (*with
their Wives, Sons, Daughters, or Servants,
within their respective Dwelling-houses*) and
within the Lock-holes of the most patent
Doors of their respective Dwelling-houses,
after six several Knocks given by me there-
at, because I could not get them personally
apprehended: And sicklike upon the——
Day of——, and Year foresaid, I passed
to the Market-crofs of —— Head-burgh
of the Sherifffdom thereof, within which
Sherifffdom, the said——, — and —— dwell
and reside, and their Lands ly; and there-
at, after crying of three several Oyeses,
open Proclamation, and publick Reading
of the within-written Criminal Letters, I,
in Name and Authority foresaid, command-
ed and charged the said——, —and——
to come and find sufficient Caution and So-
merty acted in the Books of Adjournal, that
they shall compear before the said Lords,
Day and Place within contained, and that
within the Space, under the Pains, and
made Certification, as is within exprefs'd.
This I did by affixing and leaving a full
Double of the said Letters, with a List of
the Affizers Names and Designations that
are to pass upon their Affize, and a List of
the Witnesses Names and Designations that
are

Execution a-
gainst Crimi-
nals who are
not personally
apprehended.

are to be adduced against them, with a short Copy, by way of Charge subjoined thereto, subscribed by me, at and upon the said Market-cross, for the said——, and——, because I could not get them personally apprehended. All which Copies did contain their said proper Dates, Witnesses Names and Designations therein insert, present thereat, and hereto subscribing, before and in Presence of——and——, and, for the more Verification hereof, I and the said Witnesses have subscribed the same.

J. G. Macer,

J. L. Witness.

D. M. Witness.

Marginal
Notes must be
signed.

If there is any marginal Note or Notes on the Execution, the Executor must not only sign the same, but also add these Words at the End of his Execution,——
Witnesses also to the marginal Note ; ---- and it is proper the Witnesses should also sign the Margin.

Writs libelled
on may be
called for.

And if there are Writs libelled on, and lying in the Clerk's Hands, and these Writs borrowed up on Receipt by the Prosecutor, or his Doer, at taking out the Letters: ---- So soon as the Defenders are served with a Copy of the Letters, they may call for the Writs from the Clerk to see who, if he has them not, must call for them from the Prosecutor or his Doer, and if they are not produced in a short time it will be a good Objection against the Libel.

libel, that the Writs libelled on were not in the Clerk's Hands when called for, and instruments taken thereupon; for they ought to be lodged 48 Hours before calling; or, otherwise, the Defenders may object hereto; and have the Diet on that account deserted.

Persons charged upon Criminal Letters to find Caution, acted in the Books of Adjournal, for their Compearance, are after lapsing of the Days to which they are charged, denounced, and registrate to the Horn, and Letters of Caption taken out for apprehending them where-ever they can be found.

Persons failing to find Caution, are denounced Rebels.

Follows the Letters of Caption against the Criminals, for not finding Caution, acted in the Books of Adjournal, in terms of the Charge given them upon the Criminal Letters.

GEORGE, by the Grace of GOD, King of Great Britain, France and Ireland, Defender of the Faith, to Our Lovits

Letters of Caption upon the Denunciation.

Sherrifs, Messengers at Arms, Our Sheriffs in that Part, conjunctly and severally, specially constitute, greeting: FORASMUCH AS it is humbly meaned and complained to Us, by Our Lovit A. B. with concurrence of W. G. Our Advocate, for our Interest, THAT WHERE, upon the --- Day of ---, and --- Year, ---, --- and

Letters of
Caption upon
the Denounci-
ation.

----- and -----, were orderly denounced
Rebels, and put to Our Horn, by virtue
of Criminal Letters raised at the Instance
of the said Complainers against them, for
not finding sufficient Caution, acted in the
Books of Adjournal, for their Compar-
ance before Our Lords Justice-General
Justice-Clerk and Commissioners of Jus-
ticiary, to underly the Law for the Crimes
mentioned in the said Criminal Letters
raised against them thereanent, as the said
Criminal Letters, with the Execution
thereof, duly registrate in Our Books of
Adjournal, conform to the Act of Parlia-
ment produced, bears; at the Process
which Horn, the said -----, ----- and -----
Rebels foresaid, have continually lien and
abidden, and daily haunts, frequents and
repairs to Kirk, Market, and other public
Places, within this Our Kingdom, as
they were Our free Lieges, in high Con-
tempt of Us, Our Authority and Law
and evil Example of others, to commit the
like in Time coming: OUR WILL
HEREFORE, and We charge you strictly
and command, That, incontinent thir Our
Letters seen, ye pass, and in Our Name and
Authority, command and charge the Sher-
riffs of the Sherifffdoms of -----, the Ste-
wards of the Stewarties of -----, the Pro-
voost and Bailies of the Burghs of -----, and
all other Judges and Officers of the Law
to pass, search, seek, take and apprehend
the Persons of the said -----, ----- and -----
Rebels

Rebels foresaid, where-ever they can or may be apprehended, within the Bounds of their respective Jurisdictions, put them in our Ward, Firmance and Captivity, keep, hold, and detain them thereintil, upon their own proper Charges and Expences, ay and while they fulfil and obey the Command and Charge of Our said Criminal Letters, and be orderly relaxed from the Process of our Horn, within three Days next after they be charged by you thereto, under the pain of Rebellion, and putting of them to our Horn; with Certification to them, if they failzie, Our other Letters will be direct against them, for putting them thereto *impliciter*: And also, that ye make steiked and lock-fast Gates and Doors open and patent, and use Our Keys for that Effect. And if thir Our Letters be put to Execution within Our Burgh of *Edinburgh*, that the Concurrence of the Magistrates thereof be had and required thereto. ACCORDING TO JUSTICE, &c. GIVEN under Our signet at *Edinburgh*, the ---- Day of ----, and of Our Reign the ---- Year, 17---.

Ex deliberatione Dominorum Commissionariorum Justiciarum.

J. D. Clerk.

These Letters are signet with the Seal of Court, and pass by a Bill prepared by the Clerk; the Deliverance on which is after this Form: --- *Apud Edinburgum* ---, *die mensis* ---, *anno Domini* ---, *fiat ut petitur*,
S tur,

Letters of
Caption upon
the Denounci-
ation.

Deliverance
on the Bill for
Letters of
Caption.

tur, because the Lords have seen the registered Criminal Letters, and Executions thereof within mentioned; --- which is signed by one Lord, and the Clerk signs upon the Back of the Bill before presenting.

Criminals not finding Caution must be relaxed.

If any of the Criminals shall suffer themselves to be imprisoned for not finding Caution, or abscond till the Day of Compearance, there will be a Necessity for their being relaxed from the Horn before they can have *personam standi in iudicio ad hunc effectum*, as they cannot compare before the Lords, or be permitted to propound any Defence, till they be relaxed, and the Diet will be continued for that End.

This is done by giving in a Petition to the Court for that Effect, in the Tenor following.

Unto the Right Honourable the Lords Justice Clerk, and Commissioners of Justiciary,

The PETITION of ----, ---- and ---- Prisoners in the Tolbooth of *Edinburgh*

Humbly sheweth,

Petition for Letters of Relaxation.

THAT where your Petitioners were denounced Fugitives, and put to the Horn, by virtue of Criminal Letters raised at the Instance of *A. B.* and *W. G.* his Majesty's Advocate, for his Highness's Interest for not finding Caution, acted in the Book of Adjournal, for our Compearance before your Lordships within the Tolbooth, of *Criminals*

Criminal Court-house of *Edinburgh*, the
— Day of — instant, there to un-
derly the Law for the Crimes of —,
alleged committed by us, in Manner men-
tioned in the Criminal Letters raised against
us thereanent. AND we being entirely in-
nocent of the Crimes laid to our Charge,
which thro' Ignorance and not Contempt,
made us neglect to find Caution, in the
Terms of the Citation, but are now willing
to be relaxed from the Horn, and find
Caution for our Compearance any Day your
Lordships shall appoint, and answer to any
libel raised, or to be raised against us
thereanent :

*May it therefore please your Lordships, to
grant Warrant for Letters of Relaxati-
on, and finding Caution in Manner fore-
said.*

According to Justice, &c.

This Petition is signed by the Prison-
ers, or an Advocate for them.

Follows the Interlocutor on the Petition.

"The Lords Justice-Clerk, and Commis-
sioners of Justiciary, having heard and
considered the within Petition, GRANT
WARRANT for Letters of Relaxation,
AND ORDAIN the Petitioners to find
Caution for their Appearance on the ---
Day of ----, and that they shall attend
" the

Deliverance
thereon.

“ the haill other Diets of Court, to the
 “ final End and Decision thereof.”

A. C. I. P. D.

*Follows the Letters of Relaxation on the fore-
 said Petition and Interlocutor.*

Letters of Re-
 laxation.

GEORGE, by the Grace of GOD
 King of Great Britain, France and
 Ireland, Defender of the Faith, to our
 Lovits,
 Macers, Messengers at Arms, Our Sheriffs
 in that Part, conjunctly and severally, spe-
 cially constitute, greeting : FORASMUCH
 AS, by Petition given in and presented
 Our Lords Justice-Clerk and Commissioners
 of Justiciary, by ---, --- and --- Prisoners
 in the Tolbooth of *Edinburgh*, humbly shew-
 ing, THAT WHERE the Petitioners were
 denounced Fugitives, and put to the Horn
 by virtue of Criminal Letters raised
 the Instance of *A. B.* and *W. G.* Esqrs.
 Our Advocate, for Our Interest, for not
 finding Caution, acted in the Books
 Adjournal, for their Compearance before
 their Lordships, within the Tolbooth,
 Criminal Court-house of *Edinburgh*, the
 ---Day of --- instant, there to underly the
 Law for the Crimes of--- alledged commi-
 ted by them, in Manner mentioned in the
 Criminal Letters raised against them there-
 anent; and they being entirely innocent of
 the Crimes laid to their Charge, which
 through Ignorance and not Contempt, made
 the

them neglect to find Caution in terms of the Citation, but are now willing to be relaxed from the Horn, and find Caution for their Compearance, any Day their Lordships should appoint, to answer to any Libel raised, or to be raised against them, as the said Petition bears : WHICH PETITION being heard, seen, and considered by Our said Lords, Justice-Clerk and Commissioners of Justiciary, they, by their Deliverance thereon, of the Day and Date of these Presents, ordained thir Our Letters to be direct thereon, in Manner under-written. OUR WILL IS HEREOF, and We charge you strictly and command, That, incontinent thir Our Letters seen, ye pass to the Market-cross of *Edinburgh*, and there, in Our Name and Authority, relax the said —, — and — from the Process of Denunciation led against them, restore them to Our Peace again, and deliver to them, or any in their Name, the Wand thereof, *ad hunc effectum* allenarly, that they may have *personam standi in judicio*, for proponing such Defences against the above mentioned Libel, as they shall think fit ; and that ye, within fifteen Days thereafter, cause registrate thir Our Letters, with the Executions thereof, in Our Books of Adjournal, conform to the Acts of Parliament there made thereanent. ACCORDING TO JUSTICE, (because *D. B.* is become Cauti-
oner for the Petitioner's Compearance, and for Payment of the Sum of — for their
escheat

Letters of Relaxation.

escheat Goods) as ye will answer, &
 GIVEN under Our Signet at *Edinburgh*
 the — Day of —, and of Our Reign
 the — Year, 17—.

*Per actum Dominorum Commissionariorum
 Justiciarii.*

J. D. Clerk.

They must be
 execute by a
 Macer or
 Messenger.

These Letters are signet with the Seal
 of Court; --- are execute by a Macer or
 Messenger; and the Letters, with the Ex-
 ecutions thereof, are registrate in the Books
 of Adjournal.

Persons relax-
 ed may find
 Caution for
 Compearance.

The Criminals, after they are relaxed
 may have their Trial brought to a Conclu-
 sion, whether they be in Prison or under
 Caution; --- but, if they have not found
 Caution, and being relaxed, the Bond of
 Caution for their Compearance is in the
 Form following:

*Form of the Bond of Caution for Compear-
 ance after Relaxation.*

The Bond of
 Caution.

I *A. G.* bind and oblige me, my Heirs
 Executors and Successors, as Cautioners
 and Sovery, acted in the Books of Ad-
 journal, for —, — and —, that they
 shall compear before the Lords Justice-
 General, Justice-Clerk and Commissioners
 of Justiciary, within the Tolbooth or Cri-
 minal Court-house of *Edinburgh*, the —
 Day of ----- next to come, in the House
 of Cause, there underly the Law for the
 Crimes

Crimes alledged committed by them, in
Manner mentioned in the Criminal Letters
raised against them, and others thereanent:
And also, that they shall compear the whole
other Diets of Court, to the final End and
Decision thereof, and that under the Pains
contained in the Acts of Parliament. And
the said ----, ---- and ---- bind and oblige
them, conjunctly and severally, their Heirs,
Executors and Successors, for their Cauti-
oner's Relief in the Premises.

Which is signed by the Parties.

The Criminal Letters, with the Execu-
tions against Parties, Witnesses and Affizers,
must be lodged with the Clerk 48 Hours
before the Day of Compearance, that the
Prisoners Procurators may see the same,
and give in their Objections and Defences,
(if they any have) in terms of the late
Act^z.

If the private Party, who finds Caution
or reporting of the Criminal Letters, do not
report the same duly execute, on or before
the Day of Compearance, then the Bail-
bond will be forfeited^a; and, when he re-
ports them, he should take Instruments
thereupon.

When Criminal Letters are raised at the
Lord Advocate's Instance, he finds no Cau-
tion for reporting, but must return them
to the Clerk of Court, with the Executi-
ons, within the Time prescribed by Law.

The

The Letters
and Executi-
ons must be
lodged with
the Clerk.

^z 20 Geo. II.

Private Parties
not reporting
the Letters,
forfeit their
Bail-bond.

^a Ja. VI.
Parl. 6.
c. 166.

The Lord
Advocate
finds no Cau-
tion for re-
porting Let-
ters.

The Day of Compearance being come, and the Court met, the Clerk, after calling the Witnesses and Affizers, inserts the Sederunt of the Judges present, thus :

Sederunt.

*Curia Justiciarum S. D. N. Regis, tenebris
in prætorio burgi de Edinburgo,—
die mensis—, anno Domini,—
per honorabiles viros—, Justiciarium
Clericum Dominos—, —et— Commis-
sionarios Justiciarum dicti. S. D. N.
Regis.*

Curia legitime affirmata.

Persons failing
to appear, are
fugitate.

The Cause being called, the Criminals present enter the Pannal.—But the Criminals that are under Caution, and not appearing, when called, are declared Fugitives, and the Cautioner unlawed, in the Terms of the Bail-bond.—The Sentence of Fugitation is pronounced by the Clerk to the Macer, who repeats the same audibly, thus :

Sentence of
Fugitation.

“ The Lords Justice-Clerk and Com-
“ missioners of Justiciary, DECERN AND
“ ADJUDGE—, —and—to be Out-law
“ and Fugitives from his Majesty’s Laws
“ and ordain them to be put to the Horn
“ and all their moveable Goods and Gear
“ to be escheat, and in-brought to his
“ Majesty’s Use, for their not compearance
“ to

to underly the Law, for the Crimes mentioned in the Criminal Letters raised at the Instance of *A. B.* and *W. G.* his Majesty's Advocate, for his Highness's Interest, against them thereanent, as they who were lawfully cited for that Effect; AND ORDAIN the Bond of Cautionry given for their Compearance to be forfeited."

A. C. I. P. D.

These and other Unlaws are given up by the Clerk to the Court of Exchequer on Oath, who levies the same, if not re-
mitted by the Court.

Fines and Un-
laws are given
up to the Ex-
chequer.

If there be no Accusers to insist against the Pannels, then the Court will desert the Diet *simpliciter*.---And, in case of any informality in the Libel or Executions, the Lord Advocate may crave the Diet to be deserted, *pro loco et tempore*, in order to issue new Letters; which the Court are al-
ways in Use to allow.

In what Cases
the Diet is de-
serted.

But, if the Pursuers are present, and ready to insist, then the Clerk writes in the book what follows:

Form of Pro-
cedure, if Par-
ties are pre-
sent, and in-
tend to insist.

Intran.

B. C. D. and D. E. indicted and accused at the Instance of A. B. and W. G. his Majesty's Advocate for his Highness's Interest, as guilty of a Bloodwitt or Battery, &c. com-

T

mitted

mitted by them in Manner mentioned in the Criminal Letters raised against them and others thereanent.

Pursuers.	Procurators in Defence.
Mr. W.G. his Majesty's Advocate.	Mr. R. C. Mr. R. D. Mr. A. L. } Advocates.
Mr. C. E. his Majesty's Solicitor.	
Messrs. J. B. and J. F. Advocates.	

^b Q. M. Parl. 6. c. 41.

All Prosecutors may compear with four and the Defenders with six of their Friends and no more ^b.

The Court may direct Informations to be given in.

^c 20. Geo. II.

^d Sect. 7.

The Clerk reads the Libel, and, after Reading thereof, the Preses asks the Pannels, what they have to say to their Indictment: If the Pannels deny the Crimes libelled, the Council for them, proceed first to propone their Objections against the Indictment, &c.—But, if they have none, then the Council for both Parties argue the Relevancy, which the Lords determine directly, or appoint Informations to be given in.---And, by the late Statute ^c, they may direct Informations to be given in at any Part of the Trial, where Difficulty occurs in the same Manner as is mentioned before in capital Crimes ^d.

If Informations upon the Relevancy are appointed to be given in, then the Court adjourns to a further Day, to which the Trial is continued.

An

And if, betwixt and the Day to which the Court is adjourned, the rest of the Persons contained in the Criminal Letters, and formerly declared Fugitives, apply to the Court, craving to be reponed against the Sentence of Fugitation pronounced against them, and that they are willing to appear, to stand trial.—The Lords, upon hearing of the Petition, will repone them against the same, and ordain them to find Caution, acted in the Books of Adjournal for their Appearance all the Diets of Court.

In what Cases Parties are reponed against the Sentence of Fugitation.

But Criminals, that are declared Fugitives for not compearing, and denounced Rebels, and registred at the Horn, must be relaxed, as mentioned in Page 140.—And where Persons are fugitate for Non-compearance, and do not apply recently, to be reponed against the Sentence of Fugitation, there is an Act of Adjournal extracted upon the Sentence; after which a Bill is made out by the Clerk, for Letters of Denunciation against the Criminals, indorsed on the Back by him thus: *Apud Edinburgum—, die mensis—, anno Domini—, fiat ut petitur; because the Lords have seen the Act of Adjournal within mentioned:* And one Lord passes the Bill.—The Form of Letters of Denunciation are as follows:

Persons fugitate and not reponed will be denounced;

Letters

mitted by them in Manner mentioned in the Criminal Letters raised against them and others thereanent.

Pursuers.	Procurators in Defence.
Mr. W.G. his Majesty's Advocate.	Mr. R. C. }
Mr. C. E. his Majesty's Solicitor.	Mr. R. D. } Advocates.
Messrs. J. B. and J. F. Advocates.	Mr. A. L. }

^b Q. M. Parl.
6. c. 41.

All Prosecutors may compare with four and the Defenders with six of their Friends and no more ^b.

The Court
may direct Informations to
be given in.

^c 20. Geo. II.

The Clerk reads the Libel, and, after Reading thereof, the Preses asks the Pannels, what they have to say to their Indictment: If the Pannels deny the Crimes libelled, the Council for them, proceed first to propound their Objections against the Indictment, &c.—But, if they have none, then the Council for both Parties argue the Relevancy, which the Lords determine directly, or appoint Informations to be given in.—And, by the late Statute ^c, they may direct Informations to be given in at any Part of the Trial, where Difficulty occurs in the same Manner as is mentioned before in capital Crimes ^d.

^d Sect. 7.

If Informations upon the Relevancy are appointed to be given in, then the Court adjourns to a further Day, to which the Trial is continued.

An

And if, betwixt and the Day to which the Court is adjourned, the rest of the Persons contained in the Criminal Letters, and formerly declared Fugitives, apply to the Court, craving to be reponed against the Sentence of Fugitation pronounced against them, and that they are willing to appear, to stand trial.—The Lords, upon hearing of the Petition, will repon them against the same, and ordain them to find Caution, acted in the Books of Adjournal for their Appearance all the Diets of Court.

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Persons fugitate and not reponed will be denounced;

Letters

*Letters of Denunciation against the Criminal
for Non-compearance.*Letters of De-
nunciation.

GEORGE, by the Grace of GOD
King of Great Britain, France and
Ireland, Defender of the Faith, to Our
Lovits,
Macers, Messengers, at Arms, Our Sheriff
in that Part, conjunctly and severally, spe-
cially constitute, greeting: FORASMUCH
AS, it is humbly meant and shown to us
by our Lovit *A. B.* of —THAT WHERE, in
an Court of Justiciary, holden by Our
Lords Justice-Clerk and Commissioners of
Justiciary, within the Tolbooth or Crimi-
nal Court-house of *Edinburgh*, the---Day
of--last by-past,--, —and--being oftentime
called to have compeared before our said
Lords, the said Day and Place, in the House
of Cause, to have underlyen the Law, for
the Crimes of Bloodwitt, Battery, &c.
(*here the Libel is taken in to these Words*)
“ Which being found proven”) in Man-
ner at length mentioned in the said Crimi-
nal Letters, raised at the Complainer’s In-
stance, and our Advocate for our Interest
against the forenamed Persons thereanent
As they who were lawfully cited to have
compeared, and come, and found sufficient
Caution and Soverty acted in the Books of
Adjournal, for their Compearance before
our said Lords, to the Effect foresaid, law-
ful Time of Day abidden, and they not en-
tering

er appearing, Our Lords Justice-
Clerk and Commissioners of Justiciary, by
the Mouth of J. G. Macer of Court, DE-
ERNED AND ADJUDGED—, —and—
to be Outlaws and Fugitives from our
Laws, and ordained them to be put to the
Horn, and all their moveable Goods and
Gear to be escheat and in-brought to our
Use, for their not compearing to underly
the Law, for the Crimes above mention-
ed, as an Act of Adjournal extracted there-
upon produced bears. WHICH ACT as yet
remains unput to due Execution, anent the
forenamed Persons, their Denunciation
to the Horn for the Crimes foresaid. OUR
WILL IS HEREOF, and we charge you
strictly and command, that, incontinent
after our Letters seen, ye pass to the Mar-
shal-croft of *Edinburgh*, Head-burgh of
the Sherifffdom thereof, within which
the Justice-court above mentioned was kept
and holden, and other Places needful, and
there, in our Name and Authority, de-
nounce the said—, —and—our Re-
mains, and put them to our Horn, escheat
and in-bring all their moveable Goods and
Gear to our Use, for their being Outlaws
and Fugitives from our Laws, for the
Crimes foresaid. And that ye, within fif-
teen Days thereafter, cause registrate these
our Letters, with the Execution thereof,
in our Books of Adjournal, conform to the
Acts of Parliament, made thereanent. AC-
CORDING TO JUSTICE, (because the Lords
have

Letters of De-
nunciation.

have seen the Act of Adjournal above mentioned), as ye will answer, &c. GIVEN under our Signet at *Edinburgh*, the _____ Day of _____ and of our Reign the _____ Year 17. _____

Ex deliberatione Dominorum Commissionariorum Justitiarum.

J. D. Clerk.

These Letters are signet with the Seal of Court.

Follows the Macer's Execution upon the Letters,

Execution
thereon.

UPON the _____ Day of _____ 17 _____ Years, I J. G. Macer to the Justiciary court, passed at Command of Letters of Denunciation, raised at the Instance of *A. B.* of _____, with Concourse of *W. G.* his Majesty's Advocate, for his Highness's Interest, against _____, —and—, and by virtue thereof, in his Majesty's Name and Authority, passed to the Market-cross of *Edinburgh*, Head-burgh of the Sheriffdom thereof where the Justice-court was held and kept; and there, after the crying of three several Oyesses, open Proclamation, and publick reading of the within-written Letters, I duly, lawfully and orderly, denounced the said _____, —and— his Majesty's Rebels, and put them to his Highness's Horn, by three several Blasts of an Horn, as Use is; and ordain

and all their moveable Goods and Gear, to be escheat and in-brought to his Majesty's Use, for their being Outlaws and Fugitives from his Majesty's Laws, for the Crimes within mentioned. This I did after the Form and Tenor of the said Letters in all Points, which are dated and signet at Edinburgh, the——Day of——, before these Witnesses——and——: And, for the more Verification hereof, I and the said Witnesses have subscribed the same.

Execution thereon.

J. G. Macer.

J. L. Witness.

J. D. Witness.

These Letters, with the Execution must be registred in the Books of Adjournal, and a Bill of Caption made out thereupon, which is indorsed on the Back by the Clerk thus: *Fiat ut petitur; because the Lords have seen the registred Letters of Denunciation and Execution thereof*, and signed by one of the Lords.

The Letters must be registred.

The Letters of Caption on the foresaid Letters of Denunciation, are of the same Form as those insert in Page 135.

The Criminals being reponed against the Sentence of Fugitation, and Caution found for their Appearance, and Informations upon the former Debate having been given to the Lords, ---- the Court being met in terms of their Adjournment, the Clerk, after calling over the List of Witnesses

The Criminals reponed, and Caution found, the Trial proceeds.

Procedure of
the Court.

nesses and Affizers, inserts the Sederunt of the Judges present, as before.

Thereafter the Cause being called, the Criminals present enter the Pannal, and the Clerk writes in the Book,

Intran.
A. B. C. D. and D. E. indicted and accused
in die præcedenti.

The Preses desires the Clerk to read the Libel, after which, he asks the Pannels who were declared Fugitives, what they have to say to their Indictment? And they denying the same, or as it is libelled, he asks the Council for the Prosecutors and Pannels, if they have any thing more to plead for, or against these who were declared Fugitives, and now appearing at the Bar than what was already pled for the other Pannels. --- But if neither Prosecutors nor Pannels have any thing more to say, than what has been already argued for the rest, then the Informations formerly ordained to be given in for the Pursuers and Pannels are read, and after reading, the Lords advise the Relevancy of the Libel in the Form following:

Interlocutor
on the Relevancy.

“ The Lords Justice-Clerk and Commissioners of Justiciary, having considered the Libel pursued at the Instance of A. B. of ———, with Concourse of W. G. his Majesty’s Advocate, for his High

Highness's Interest, against -----, -----
 and ----- Pannels, with the foregoing
 Debate thereupon, THEY FIND the Pannels, or any of them, their beating, wounding, or bruising the Pursuer with Stones, or other Weapons, the Time and Place libelled, or that they, or any of them, were accessory, or Art and Part thereof, *relevant* to infer an arbitrary Punishment, Damages and Expences : AND REPEL the haill Defences proponed for the Pannels ; and remit them and the Libel, as found relevant, to the Knowledge of an Affize."

A. C. I. P. D.

The rest of the Procedure is the same as in Capital Crimes, the several Forms of which are before fully set down^e ; only the Custom of reducing the Testimonies of the Witnesses to Writing, in Trials not inferring the Punishment of Death or Demembration, is by the late Act discharged, as troublesome and unnecessary^f : * Sect. 7.

And, instead thereof, this Act ordains,--
 " That, from and after the 1st of July
 " 1748, it shall be lawful for the Court of
 " Justiciary, and the respective Circuit
 " Courts, to proceed in, try, and determine all Causes and Prosecutions before
 " them, for any Crime not inferring the
 " Punishment of Death or Demembration,
 " whereupon the Verdict of an Affize

In what Causes the Evidence of the Witnesses are not to be reduced to Writing by the late Act.

U

" or

The Council
and Pannel
may interro-
gate the Wit-
nesses.

The Judges
to sum up the
Evidence.

“ or Jury is to pass, upon examining and
“ hearing the Evidence of the Witnesses
“ adduced or examined in any such Cause
“ or Prosecution, *viva voce*, without reduc-
“ cing into Writing, the Testimony of such
“ Witnesses; and that the Practice of tak-
“ king down, and reducing into Writing
“ the Testimony of Witnesses in such
“ Cases, be, and the same is hereby abro-
“ gated and abolished.”--And also, “That in
“ such Cases, where the Testimony of Wit-
“ nesses shall not be reduced into Writing
“ the Council on both Sides, and the Pan-
“ nel, may interrogate the Witnesses, to an-
“ swer upon pertinent and legal Questions; and
“ that immediately before the Assize or Ju-
“ ry shall be inclosed, the Evidence shall be
“ summed up by the Judges before whom
“ such Trial shall be had, or one of them.

When a Verdict is returned against the
Pannels in general, finding them *guilty*
then the Court pronounce Sentence ac-
cordingly; --- but where the same is spe-
cial, the Sentence will be after this or the
like Form:

Form of the
Sentence upon
a special Ver-
dict.

“ The Lords Justice-Clerk, and Com-
“ missioners of Justiciary, in respect of the
“ foregoing Verdict of Assize, returned
“ upon the — Day of — instan-
“ tly against —, — and — Pannel
“ by the Mouth of J. P. Macer of Court

“ FIN

FINE AND AMERCIATE the said *A. G.* in the Sum of ——— *Sterling*, the said *C. D.* in the Sum of ———, the said *D. E.* in the Sum of ———, and the said *F. G.* in the Sum of ———. AND DECERN each of them to make Payment of the respective Sums to *A. B.* Pursuer, in Name of Damages and Expences. AND ORDAIN them to be imprisoned in the Tolbooth of *Edinburgh* till the ——— Day of ———, and thereafter to remain in the said Prison, ay and while they make Payment of their said respective Sums in Manner above mentioned; and thereafter to be set at Liberty; which is pronounced for Doom."

All the Judges on the Bench sign the Sentence.

Fines and Amerciaments, or Unlaws inflicted upon Offenders, or Persons guilty of Contumacy, are sometimes ordained wholly to be paid to the King, and sometimes only a Part, and the rest to the private Parties injured: ——— Sometimes the whole, or the most Part of such Fines, are appointed to be paid to the private Parties, and the rest to the Fisk, or applied to such other Uses as the Judges think fit. ——— For Payment of which Fines, Horning and Caption may be issued forth of Course, upon Acts of Adjournal. ——— And Denunciation at the Market-crofs of *Edinburgh*,

In what Manner Fines and Unlaws are applied.

§ Ja. VI.
Parl. 12.
c. 126.

burgh, Head-*burgh* of the Shire, within which the Court sits, will as effectually make Escheat fall, as if made at the Head-*burgh* of the Shire where the Parties dwell §. --- Seldom the Lords grant that Privilege by Horning, but ordain them to be carried to Prison while Payment be made. --- The Macer indeed may indulge the Criminals, by keeping them in his Custody, some little Time till Payment be made; but it is at his Risque if they escape.

And where Petitions for reponing Parties against Acts of Fugitation, Fines for Contumacy, &c. are once refused, a second Petition for the same Purpose, cannot be offered, unless the Petitioner obtain Leave to withdraw his former Petition, by giving in a Bill for that Effect upon new Reasons.

^a 3 Geo. II.
c. 32.

Within what Time a Sentence inferring an arbitrary Punishment, must be executed.

By a *British* Statute ^h it is declared, lawful for all Magistrates, and Courts of Judicature in *Scotland*, to put in Execution any Judgment or Sentence, importing any corporal Punishment less than Death or Dismembering, if given or pronounced in any Part of *Scotland*, to the South of the River *Forth*, after the elapsing of eight Days; and if given and pronounced in any other Place, to the Northward of the said River or Frith of *Forth*, after the elapsing of twelve Days, from and after the Date of such Judgment or Sentence respectively.

And

And by the same Act, the Court of Justiciary, or any of the Judges thereof, are empowered, upon Application made, and Cause shown by any Person aggrieved by such Sentence, given by any inferior Court-judicature, to stay all Execution of such Sentence for 30 Days.

Lastly, Tho' a formal Trial by a Process and Affize, be the regular Form of Procedure in Criminal Prosecutions, yet, in Cases of lesser Consequences, the Court of Justiciary, and other Criminal Judges, punish Offenders in petty Crimes, *sine stre-itu & forma judicii* summarily, by ordering them to be scourged or banished, &c.

The Court of Justiciary may stay Execution on Sentences of inferior Judges,

And may punish lesser Crimes summarily, without a Trial by an Inquest.

S E C T. VIII.

Concerning High Treason, with the Trial and Procedure therein upon a Commission of Oyer and Terminer.

TREASON of old with us, was pursued before the Justice-court, without any Commission of Oyer and Terminer from the King, and also before the Justice Aurs or Circuit Courtsⁱ.

The several Species of High Treason by our Statutes were, 1. Rising in Arms and open Rebellion against the King^k. -- 2. Laying Hands upon the King's Person violently, of what Age soever; or to attempt some-

Treason of old was pursued before the Justice-court.

ⁱ Ja. VII.
Parl. 1. c. 29.

Species of High Treason by our Statutes.

^k Ja. I. Act 3.
Ja. II. Act 25.

^l Ja. II.
Act 24.
^m Ja. II.
Act 24.
Ja. V. Act 97.

ⁿ Ja. II.
Act 24.
Ch. II. Parl. 1.
Ses. 1.

^o Ja. II.
Act 54.

^p Q. Mary,
Act 8.

^q Ja. VI.
P. 8. Act 130.

^r Ja. VI. P. 8.
Act 129.

^s Ja. VI. P. 11.
Act 49.

^t Ch. II.
Parl. 1. Act 3.
Crimes which
were declared
Treason by
Statutes with
us.

The Manner
of serving an
Indictment for
Treason of old,
^u Ja. VI. P. 12.
c. 125.

somewhat, by which the personal Safety of the King was more immediately threatened ^l. --- 3. Resetting Traitors, or those who lay at the Horn for treasonable Practices ^m. --- 4. Assaulting, or attacking the King's Castles, where he happened to be for the Time, without Warrant of the Three Estates ⁿ. --- 5. Raising a Fray in the King's Host wilfully, or with a bad Intention, and without a just Cause ^o. --- 6. The moving any Question, Picque, Grudge, or Quarrel against those who had slain such as had been lawfully declared Traitors ^p. --- 7. Impugning the Dignity and Authority of the Three Estates of Parliament, or attempting any Diminution of its Power and Authority ^q. --- 8. Declining the Judgment and Authority of the King in any Matter Civil or Ecclesiastick ^r. --- Both these became Treason by the particular Exigencies of the Times. --- 9. The concealing and not revealing the Treason of another ^s. 10. Denying the King's Power to call, prorogue, and dissolve Parliaments ^t.

And the several Crimes which were declared Treason by particular Statutes were *wilful Fire raising, Theft committed by land Men, Murder under Trust, firing Cockbeughs and Assassinations.*

The Indictment for Treason of old was appointed to be given to the Criminal Heralds, Pursevents, and Trumpets their Coats ^u, who sounded all the Way from the Court-house to the Prison-door

which was immediately opened, and, with open Doors, they sounded three times; then entered and sounded all the Way till they came to the Criminal's Apartment, and there sounded three times before giving Indictment, using the same Form in their Return from the Prison:—And, in case the treasonable Person was absconded, and not in Custody, then he received Sentence of Fugitation, and the Heralds and Pursevants carried Copies of his armorial bearings (after tearing severals of them in the Court-house) to the Cross of *Edinburgh*, with Trumpets sounding all the Way, and ascended the Cross, and sounded three times; thereafter one of the Heralds promulgate the Sentence read by the Clerk of Court or his Depute, he and all the rest being uncovered, and then tore several more of the armorial Copies or Bearings of the Rebel, and battered on the Cross the said armorial Bearing reversely (which was the Top or Chief of the Shield undermost), and returned from whence they came, the trumpets sounding all the Way.—This was the antient Form, before the Union of the two Kingdoms. And the Justice-court was impowered to proceed and pronounce Sentence and Forfeiture, in Cases of High Treason, in Absence of the Party accused, upon sufficient Probation taken before them^w. But now Cases of Treason are regulated by the Law of *England*: Wherefore all Crimes, by this Statute ^x, which are High Treason,

And of the Sentence of Fugitation thereon.

^w Ch. II. P. 2. Act 11.

^x 7. Annæ c. 21.

Cases of High
Treason now
regulate by the
Law of Eng-
land.

The Justici-
ary-court, &c.
in Trials for
High Treason
to proceed in
the same Man-
ner as the
Court of
King's Bench
in England.

Writ of *Certio-
rari*.

Treason, or Misprision of High Treason in *England*, shall be High Treason or Misprision of High Treason in *Scotland*; and the same Crimes shall be High Treason or Misprision of High Treason in *Scotland*, but those that are such in *England*; and his Majesty may issue Commissions of *Oyer and Terminer* under the great Seal, three of the Lords of Justiciary to be in the Commission whereof one to be of the *Quorum*, to inquire of, hear, and determine such High Treasons, and Misprision of High Treason, in Manner as is used in *England*.

The Justice-court, or others having Power to judge in Cases of High Treason and Misprision of High Treason, are required by this Act, to inquire, by the Oaths of twelve Men of the Shire or Stewarty where the Courts shall sit, of High Treasons and Misprision of High Treason committed within the said Shire or Stewarties; and thereupon to proceed, hear, and determine the said Offence whereof any Person shall be indicted before them, in such Manner as the Court of King's Bench, or Justices of *Oyer and Terminer* in *England* may do.---And, if a Person be indicted of High Treason or Misprision of High Treason, before a Justice of *Oyer and Terminer*, or in Circuit Courts, upon the Request of the King's Advocate-General, the Lord-Chancellor or Keeper of the Great Seal, shall award a Writ of *Certiorari* directed to the Justice

of Oyer and Terminer, &c. commanding them to certify such Indictment into the Justice-court, which Court is required to proceed upon, hear and determine the same as the Court of King's Bench in *England* may do.---And all Persons convicted or attainted of High Treason, or Misprision of High Treason in *Scotland*, shall be subject to the same Corruption of Blood, Pains and Forfeitures, as Persons convicted or attainted of High Treason, or Misprision of High Treason in *England*.---And every Person, may be returned to be a Juryman in any such Trials, who shall, at the Time of such Trial, be seized in his own Right, or in the Right of his Wife, of an Estate of inheritance, or for Life, within the County, Stewarty, or Place from whence the Jury is to come, of the yearly Value of *£100* *sterling*; and, for Want thereof, or for any other Cause, shall be subject to be challenged and set aside.

Theft in landed Men, Murder under Trust, wilful Fire-raising, firing Coal-heughs, and Assassination, which were declared to be Treason by particular Statutes in *Scotland*, are only adjudged to be capital Offences by this Act.

By the same Act, the slaying any of the Lords of Session or Justiciary, sitting in Judgment, in the Exercise of their Offices, is adjudged High Treason; as also the counterfeiting any of the King's Seals, appointed

Persons convicted or attainted of High Treason, subject to the same Pains, Penalties and Forfeitures as in *England*.

Jurors how qualified.

Our statutory Treasons only declared capital by this Act.

Crimes declared Treason by this Act.

Treasons committed on the high Sea.

pointed by the Articles of the Union to be kept and used for *Scotland*.

By the same Act, all Treasons, and Misprision of Treasons, which shall be done or committed, by any Native of *Scotland*, upon the high Sea, or in any Place out of the Realm of *Great Britain*, shall be inquired of, heard, and determined before the Justice-court, or before such Commissioners of Oyer and Terminer, and in such Shire, Stewarty, or County of *Great Britain*, as shall be assigned by the King's Commission, and by good and lawful Men of the same Shire, in like Manner, to all Intents and Purposes, as if such Treasons, or Misprision of Treasons, had been done or committed in the same Shire where they shall be so tried.

The several Kinds of Treason by the Act 25th Edw. III.

The Standard-law in *England*, concerning High Treason, is the Statute of the 25th of *Edward III.* cap. 2. which declares the several Species or Heads of it, viz. 1. To compass or imagine the Death of the King or of his Queen, or their eldest Son and Heir.---2. To violate the King's Wife or his eldest Daughter unmarried, or the Wife of his eldest Son.---3. To levy War against the King in his Realm or be adherent to his Enemies by open Deed, giving them Aid or Comfort in his Realm.---4. To counterfeit the King's Great or Privy Seal, or his Money, or to bring false Money knowingly into the Realm to merchandize or make Payment therewith.—This Article

is further enlarged by subsequent Statutes; and all Abuses, touching the Coin of this Realm, in Gold or Silver, or as to foreign Coin current in the Realm, is made High Treason; and, as to foreign Coin not current, it is Misprision of Treason; and all making and keeping of Instruments, for making or marking of Money, &c. is declared High Treason. But the Attainder proceeding upon these Acts shall not infer Corruption of Blood, or make the Wife lose her Dower y.---5. To slay the Chancellor, Treasurer, or the King's Justices of the one Bench, or the other, Justices in Eyre, or Justices of Assize, and all other Justices assigned to hear and determine, being in their Places doing their Offices.

The Person assuming the Title of James III. of England, and VIII. of Scotland, characterised the Pretender, was attainted of High Treason, by an *English* Statute z.—By this Act, it is declared, that, any Person shall correspond with the said Pretender, or with Persons employed by him, knowing them to be so employed, pay, or remit Money for his Use and service, he shall be adjudged guilty of High Treason. ---- Such Correspondence with, or Remittance to any of the Pretender's Sons, is likewise, by a *British* Statute, declared High Treason a.—Further it is declared the Crime of High Treason, maliciously, advisedly and directly by Printing

y 1. Mar. c.6.
1. and 2. Phil.
and Mar.c.11.
5. Eliz. c. 1.
14. Eliz. c. 3.
18. Eliz. c. 1.
8. and 9. W.
9. Annæ.
c. 25.

Treasons enacted since 25.
Ed. III. &c.

z 13. W. III.
c. 3.

a 17. Geo. II.
c. 39.

ing or Writing, to affirm, That any Person hath Right to the Crown of Great Britain, and Dominions thereto belonging, otherwise than according to the Act settling the Succession thereto in the Protestant Line, or that the Kings or Queens of England, by the Authority of Parliament, cannot make Laws, to limit and bind the Crown, and the Descent and Government thereof; and to maintain the same by preaching, teaching, or advised speaking, infers a *Præmunire* ^b.

^b 6. Annæ
c. 7.

^c 33. Hen.
VIII. c. 20.

An Attainder
for High
Treason at
common Law
hath the same
Effect as by
Act of Parlia-
ment.

By a Statute in England ^c, Persons convicted of High Treason, by Authority of Parliament, or the common Law, afterwards falling into Lunacy, shall suffer Execution:—And an Attainder, for High Treason, by the common Law, shall be of as good Force, as if it had been by Authority of Parliament; and the King shall be adjudged in actual Possession of the Lands and Goods of the Offenders, which he would have had, if the Attainder had been by Authority of Parliament, without any Office or Inquisition found.

^d 35. Hen.
VIII. c. 2.

Trial of such
Offences com-
mitted abroad.

And, by another Statute ^d, it is enacted
“ That all Offences declared to be Treason,
“ sons, Misprisions of Treasons, or Con-
“ cealments of Treason, done or committed
“ out of the King's Dominions, shall
“ be tried before the Justices of the King's
“ Bench, by good and lawful Men of the
“ same Shire, where the said Court shall
“ sit, or else before such Commissioners

“ and

and in such Shire of the Realm, as shall be assigned by the King's Commission, in the same Manner and Form as the same had been committed in such Shire."—By the same Rule, Attainders, before the Court of Justiciary, or Commissioners of Oyer and Terminer in this Country, must have the same Effect as if they were by Act of Parliament.—And, by a late Statute ^e, all Offences committed against that Act, by corresponding with the Pretender or his Sons, &c. out of the Realm, is appointed to be tried in any County in *England*, or in any Shire or Stewarty in *Scotland*, as if the same had been committed in such Shire or Stewarty, within which he shall be so tried.

By special Statute in *England* ^f, Persons indicted for High Treason, or Misprision of High Treason, whereby Corruption of Blood may ensue, shall have a Copy of the indictment, but not the Names of the Witnesses delivered to them, five Days at least before the Trial.—And every Person shall be admitted to make his Defence by Council, and to make any Proof, that he can produce by lawful Witnesses upon oath for his Defence.—And, in case any Person so accused shall desire Council, the Court, before whom such Person shall be tried, or some Judge of that Court shall immediately, upon his Request, assign such Council, not exceeding two, as the Person shall desire, to whom such Council shall have

^e 17. Geo. II.

^f 7. W. III.
c. 3.

Persons indicted of High Treason to have a Copy of his Indictment 5 Days before Trial.

The Court to assign Council.

Two Testimonies to the same Overt-act are necessary, unless where the Party accused confess or stand mute, &c.

Within what Time a Trial for High Treason is competent.

have free Access at all seasonable Hours.

By the same Statute, no Person shall be indicted, tried, or attainted of High Treason, or Misprision of High Treason whereby Corruption of Blood may follow but, upon the Testimony of two lawful Witnesses, either both of them to the same Overt-act, or one of them to one, and the other of them to another Overt-act of the same Treason, unless the Party so indicted shall willingly, without Violence, in open Court, confess the same, or shall stand mute, or refuse to plead, or, in Cases of High Treason, shall peremptorily challenge above the Number of thirty five of the Jury.—But, if two or more distinct Treasons of diverse Kinds, be alledged in one Bill of Indictment; one Witness produced to prove one of the Treasons, and another to prove another, shall not be deemed Witnesses to the same Treason.—And no Evidence shall be given of an Overt-act, that is not expressly laid in the Indictment.

No Person shall be prosecuted for an High Treason or Misprision of High Treason, by this Act, unless Indictment be found against him by a Grand Jury, within three Years of the Treason or Offence committed:—But the designing, endeavouring or attempting an Assassination on the Body of the King, by Poison or otherwise may be prosecuted at any Time.

All Persons, by this Statute, who shall be accused and tried for High Treason or Conspiracy of High Treason, shall have Copies of the Panel of the Jurors duly returned by the Sheriff, delivered to them 10 Days before Trial, and to have the same Process to compel their Witnesses to appear at such Trials, as is usually granted, to compel Witnesses to compare against them.—And no Indictment for High Treason, nor any Process or Return thereupon, shall be quashed on the Motion of the Prisoner or his Council for Miswriting, misspelling, false or improper Latin, unless Exception be taken in Court, by the Prisoner or his Council, before any Evidence given upon such Indictment; nor shall any such miswriting, &c. after Conviction, be Cause to stay or reverse Judgment; but Judgment given upon such Indictment, may be reversed by Writ of Error.

Parties to have a List of the Jurors delivered to them, &c.

No Indictment to be quashed for miswriting, &c.

This Act is not to be extended to an Indictment of High Treason for counterfeiting his Majesty's Coin, or his Great Privy Seal, Sign-manuel, or Privy Signet.

To what this Act is extended.

Where a Bill of Indictment is found against a Party, by a Grand Jury, within three Years of the Fact committed, Process may thereon be issued, in order to an Out-lawry, at any Time during his Life; and if, in Course of such Procedure, he absconds himself, he is to be tried by a special

When a Bill is found, Out-lawry may proceed thereon, at any Time during the Party's Life; the Effect of such Out-lawry.

or

or petty Jury.—But, if he suffer the Out-lawry to go against him, it has the same Effect, as a Judgment upon Conviction whereon Corruption of Blood, and all other Pains of High Treason are consequential, unless the Out-lawry be afterward reversed, through Informality of the Procedure.

The Grand
and petty Ju-
ries.

The Grand Jury must consist of thirteen or any greater Number, for those being the Grand Inquisitors of the Country; every Indictment or Presentment must be found by twelve, at least, agreeing in one Voice.—But the Sheriff must return twenty four or more, *probos et legales homines patriæ*;—and all Juries ought to be of the same County, where the Crime was really or holden as committed, not Aliens or Persons outlawed for a Crime; and those returned on the Grand Jury must be Freeholders &c.---The petty Jury consists of twelve Men, agreeing in one Voice, returned by the Sheriff, and, if eleven agreed, and one dissent, the Verdict shall not be taken by the eleven, nor yet the Refuser fined or imprisoned; for Men cannot be forced to give their Verdict against their Judgment. Wherefore, in such Case, the twelfth Man will be delivered, and a new *Venire* must be awarded to bring in Jurors in order to a new Trial.

g Bac. new
Abr. (Juries)
230.

h Bac. ibid.
269

A Trial in terms of the Act of the 25th *Edward III.* made our Law by the foresaid Statute of Queen *Anne*, cannot

carried

carried on for Treason after the Offender's Deathⁱ.——But, one may be attainted of High Treason, after his Death, by Act of Parliament.

It is implied in the Judgment of High Treason, that the Delinquent shall forfeit to the King, all his Lands and Tenements whatsoever, whether in Fee-simple or Fee-tail, holden, or not holden, of any other, which he had at the Time of the Treason committed; and all his Goods and Chattels or Moveables, from the Time of the Conviction, and that his Blood shall be corrupted, whereby he loses all his Honours, and becomes base as to his Birth, and his Children cannot succeed to him, nor any of his lineal Ancestors.——In Misprision of High Treason, which is “one's knowing of it, and not revealing the same to a Judge or Magistrate.”—The Punishment is Imprisonment for Life, and Forfeiture of the Offender's Goods and Chattels, and Profits of his Lands during his life^k.

By special Statute^l it is declared, That no Person shall not be prosecuted for any seditious or treasonable Words spoken by them, unless Information thereof be given upon Oath to a Justice of Peace, within three Days, after such Words spoken; and the Prosecution of such Offence, be within three Months after such Information: And no Person shall be convicted for such Words spoken, but by the Oaths of two Witnesses.

Y

After

How far a Trial for Treason can be carried on after the Offender's Death.

ⁱ Coke 3. Inst. p. 12.

The Pains and Forfeitures for High Treason and Misprision of Treason.

^k Coke 1. Inst. 391, 392, 393. Inst. 211, 218.

^l 6 Annæ c. 7.

Within what Time Persons are to be prosecuted for treasonable Words.

Procedure in
a Trial for
High Treason
after the Pre-
tender's
Death.

^m 7 Annæ,
c. 21.

ⁿ 17 Geo. II.

^o 1 Annæ, c. 9.

Witnesses in
Trials for
Treason.

^p 1 Geo.
c. 20.

^q 7 Annæ,
c. 25.

Prosecutions
for making or
mending
Tools for
coining.

After the Pretender's Death, Persons indicted for High Treason, or Misprision of High Treason, shall have a List of the Witnesses and Jury delivered to them, with a Copy of the Indictment, ten Days before Trial, in Presence of two Witnesses.—And no Attainder for High Treason thereafter, shall extend to the disinheriting any Heir, nor to the Prejudice of any Person other than the Offender during his Life^m ---But by a late Actⁿ, the Provision in the foresaid Statute, is declared not to take Place, or have any Operation, Force or Effect, until the Deceases, not only of the Pretender, but also of his eldest, and all and every other Son and Sons.

Further, by Statute in *England*^o, all Persons who shall be produced, or appear as Witnesses, on behalf of the Prisoner, upon any Trial for Treason, before they be admitted to depose, or give any Manner of Evidence, shall first take an Oath to depose the Truth, the whole Truth, and nothing but the Truth, in such Manner as the Witnesses for the King are by Law obliged to do.—And no Person shall be capable of being a Witness, in a Trial for High Treason against any Person, by whose Conviction or Forfeiture, any Benefit shall or may accrue to such Witness.

And by a *British* Statute^q it is declared That all Prosecutions to be made for any Offence against the Act of the 8th of King *William*, by making, mending, or begin-
ning

ning or proceeding to make or mend, any coining Tool or Instrument therein prohibited, or by marking of Money round the Edges, with Letters or Grainings, may be commenced at any time within six Months, after such Offence committed, but not thereafter.

By a late Statute ^r it is declared, That from and after the 1st of *April* 1748, all Offences of High Treason, or Misprision of High Treason, already committed, or to be hereafter committed, in the Shires of *Dumbarton, Stirling, Perth, Kincardine, Aberdeen, Inverness, Nairn, Cromerty, Argyll, Forfar, Banff, Sutherland, Caithness, Elgin and Ross*, and the Shire or Stewarty of *Orkney*, or any of them, are to be tried in the Court of Justiciary in the Shire or Stewarty where the same shall sit, or before Commissioners of Oyer and Terminer, to be appointed by his Majesty, in the same Manner as if such Offences had been committed in the Shire or Stewarty where they shall be so tried.

And the Court of Justiciary, or Commissioners of Oyer and Terminer respectively, are to issue Process to the Sheriffs or Stewarts of the Shires or Stewarties, for returning such a Number of Jurors out of their several Shires or Stewarties, as to the said Court or Commissioners, shall seem meet.—And that, in all such Cases, no Challenge for the County, Shire or Stewarty, shall be allowed, but the Challenge to

r 21 Geo. II.

High Treason committed within the Shires of *Dumbarton, &c.* to be tried before the Justiciary, or Commissioners of Oyer and Terminer.

The Court to issue Process for Return of Jurors.

Challenges to Jurors.

to any Juror for not being possessed in his own Right, or in the Right of his Wife, of Lands or Tenements, as Proprietor or Life-renter, within the County, Shire or Stew-arty, out of which he shall come, and all other lawful Challenges shall be allowed.

Three of the Lords of Justiciary to be in the Commission of Oyer and Terminer.

Three of the Lords of Justiciary are, by this Act, to be named in every Commission of Oyer and Terminer, whereof one to be of the *Quorum*. — And if any Indictment shall be found before such Court of Oyer and Terminer, upon Request made by his Majesty's Advocate, the Lord Chancellor or Keeper of the Great Seal, shall award a Writ of *Certiorari*, directed to the Commissioners of Oyer and Terminer, commanding them to certify such Indictment into the Court of Justiciary, who shall have Power to proceed and determine therein, as the Court of King's Bench in *England* may do in the like Cases; and shall issue out such Processes for the Return of Jurors, as is above directed.

Writs of *Certiorari*, how to be issued.

Persons convicted by this Act, subject to Corruption of Blood, &c.

And all Persons convicted or attainted of High Treason, or Misprision of High Treason, by this Act, shall be subject and liable to the same Corruption of Blood, Pain, Penalties and Forfeitures, as Persons convicted or attainted by the Act of the 7th of Queen *Anne*.

This Act is only to continue in Force for seven Years.

The Nature of a Writ of *Certiorari*.

A Writ of *Certiorari* answers in some Measure to our Advocations. — In civil Cases

Cases in *England*, it is a Writ that lies, where a Man has Occasion to produce a Record of an inferior Court into the Chancery, from whence it may be transmitted to any other Court, by a Writ called *Mittimus* ^t. — And where this Writ lies in Cases of High Treason, and Misprision of Treason, to remove the Trial from the Justices of Oyer and Terminer into the Court of Justiciary, no doubt it must contain Reasons for such Removal.

^t Finch. 443.

The Court of Justiciary in *Scotland* being, by the Articles of Union ^t, exempted from all Dependence upon the Courts of *Westminster* Hall; the Writs issuing out of these Courts, in order to Outlawry, could have no Course in *Scotland*, on account of the Difference in our Forms: Wherefore, to remove all Difficulties on that Head, the late Statute was introduced ^u, which enacts, — That Persons to be indicted for High Treason, or Misprision of High Treason, before any Court of Justice in *Scotland*, having Jurisdiction to take such Indictments, and shall not be in Custody for the same, the Court wherein such Indictment shall be found or duly certified, shall issue one Writ of *Capias*, against the Person or Persons so indicted, being so out of Custody, directed to the Sheriff or Stewart of the Shire or Stewarty, wherein such Indictment shall be found, and made returnable in the same Court, forty two Days at least after the Test thereof, or a longer Time,

^t Art. 19.

^u 22 Geo. II.
c. 48.

The Procedure in order to Outlawry, in Cases of High Treason by this Act.

Time, by the Discretion of the Court, if the Case requires it; which Writ shall be delivered to the Sheriff or Stewart, who shall endeavour to find and apprehend the Defendant within his Jurisdiction. — And if the Defendant shall be named in such Writ of any Parish or Place, which lies in any other Shire or Stewarty, other than that in which such Indictment shall be found, then the Court shall issue another Writ of *Capias* to the Sheriff or Stewart of such other Shire or Stewarty of the same Test, Return and Import with the former.

Writs of Proclamation and Exigent, how to be issued.

But if such Sheriffs or Stewarts, shall return to both the said Writs, or to one of them, (in Cases where only one shall be necessary) then two other Writs shall be issued, the one a Writ of Proclamation and the other a Writ of Exigent, and tested the Day of the Return of the said Writ of *Capias*, and directed to the Sheriff or Stewart, within whose Jurisdiction the Defendant's House or Estate lieth, and returnable in one and the same future Day.

Manner of serving the Writ of Proclamation.

By the Writ of Proclamation, the Sheriff or Stewart, shall cause the Defendant to be proclaimed three Times, once at the Sheriff or Stewart Court, a second Time at the Quarter-sessions to be held for the said Shire or County, and a third Time near to the Church-door, and if there be no Church, in some publick Place of the Parish; of which the said Defendant shall be named or described in the Indictment, by

twice

between the Hours of ten of the Clock in the Morning, and two in the Afternoon:— and such third Proclamation shall be made twenty eight Days at least, before the fifth and last of the Sheriff or Stewart Courts, at which the Defendant is to be called by the Writ of Exigent.

And, by virtue of the Writ of Exigent, the said Sheriff or Stewart shall cause the Defendant to be called to appear at each of the successive Courts, to be held by the Sheriff or Stewart-depute; and if the Defendant shall not appear, and surrender himself at one or other of these Courts, to which he shall be called, so as to be forthcoming to Justice, the Sheriff or Stewart-depute shall, at the last of the said five Courts, pronounce Judgment of Outlawry, and sign and return the same, with the Writs of Proclamation and Exigent, to the Courts from whence they were issued, together with the Indorsations, certifying, that every thing required of him by the said Writs, was done, and that the Defendant did not appear, (if that shall be the case); and thereupon the Defendant shall be deemed to be attainted of such High Treason, as shall be contained in the Indictment, and shall be subject and liable to such Execution and Corruption of Blood, Fines, Penalties, Forfeitures and Processes, in respect to his Estate, real and personal, moveable and immoveable, to which persons attainted of High Treason are by Law

Writ of Exigent.—
Method of serving the same.

Outlawry and Consequences thereof.

176. *Concerning HIGH TREASON,*

Law subject and liable; — and a Defendant so outlawed for Misprision of High Treason, shall be subject and liable to all such Forfeitures and Processes, as Persons outlawed according to the Law of *England* for Misprision of High Treason, are liable and subject to.

Defendants to have the same Remedies for setting aside Outlawries as in England.

All Defendants outlawed for High Treason, or Misprision of High Treason in *Scotland*, shall, in virtue of this Statute, have as near as can be, such and the like Writs, Means, Methods, Remedies and Advantages, for avoiding, falsifying, or reversing any such Outlawry, as may be had by the Law and Usage in *England*, in the like Cases, (excepting so far as the Forms of proceeding are varied and settled by the Act) and all the Writs before mentioned with the Returns thereof, and Judgments of Outlawry, shall be recorded and preserved in the Court to which the said Writs shall be returned, unless removed by due Course of Law.

The Sheriff or Stewart Courts for serving the Writs, how to be held.

By the same Act, the Sheriff or Stewart to whom the respective Writs of Proclamation and Exigent shall be directed and delivered, shall forthwith appoint five successive Courts of the Sheriff or Stewart or depute, to be held for the Purposes above mentioned, three Days Notice being first given before the first Court, at the Headborough of the Shire or Stewarty, of the Times and Places, where such Courts shall be held, and the first of these Courts, which

which the Defendant is to be called, by virtue of the Writ of Exigent, shall be held within twenty Days after Delivery thereof to the Sheriff or Stewart, and each of the other four successive Courts, shall be held, at the End of the four Weeks from the Court preceeding.

The Writ of *Capias* must be in the King's Name, under the Seal of such Courts from whence they are issued, direct to the Sheriff or Stewart, commanding him to take the Defendant, and bring him before the Court, from whence the Writ proceeds, at a certain Time and Place therein mentioned. — The Writ of Proclamation in the same Way, direct to the Sheriff or Stewart, commanding him to take the Defendant, and have him before such Court, at a certain Time and Place therein mentioned; and, in case the Defendant cannot be found, within his Shire or Stewarty, contains a Warrant for making the three Proclamations above mentioned. — And the Writ of Exigent must be in the King's Name, direct to the Sheriff or Stewart, commanding him to cause the Defendant to be called, from Court to Court, until he be outlawed; and if he appear, then to take him, or his Body before the Court from whence the Writ shall be issued, at a certain Time and Place therein mentioned, to answer to his Majesty, for the Crime of which he is indicted.

Form of the Writs.

Capias.

Proclamation.

Exigent.

The Nature
of a Writ of
Exigent.

A Writ of Exigent, in virtue whereof the Sheriff proclaims and calls the Defendant five County Days to appear, is so termed, because it exacts and requires the Defendant to appear and answer the Law upon Pain of Outlawry; for if he come not at the last Day's Proclamation, he is said to be *quinquies exactus*, and then he is outlawed.

Persons out
of the King-
dom may tra-
verse the Out-
lawry within
a Year after it
is pronoun-
ced.

By the same Act, if any Person so outlawed for High Treason, shall at the Time of such Outlawry pronounced, be Resident or Inhabitant out of the Limits of the Kingdom of *Great Britain*, and within one Year after such Outlawry pronounced, yield himself to the Justice-General, Justice-Clerk, or any of the Commissioners of Justiciary, he shall be at Liberty to traverse the Indictment, on which such Outlawry was pronounced, and take his Trial thereupon; and in case, on such Trial, he be found not guilty by Verdict of the Jury, then he shall be clearly acquitted and discharged of such Outlawry, in the same Manner, as if no such Outlawry had been made.

Warrant for
Execution up-
on an Out-
lawry in Eng-
land, never a-
warded till
the Party be
sifted at the
Bar.

Altho' upon Outlawry in Cases of Treason in *England*, the Offender loses all, and forfeits as much as if he had appeared and Judgment had been given against him, as long as the Outlawry is in Force; yet in such Case, there is never an Award of Execution against the Party, till he be brought to the Bar, because there may

Mistake in the Person, or something may have happened since the Judgment, why Execution should not be awarded *.

* Vin. tit. 10
(absence)
p. 111.

Those that are in default till the Exigent in Treason, tho' they render themselves to Justice, forfeit their Chattels; for that is Flight in Law y. — And after an Outlawry for Treason is reversed, the Party shall be put to plead to the Indictment; for that remains still good.

y Finch. 3.

PROCEDURE upon a COMMISSION of Oyer and Terminer.

WHEN a Commission of Oyer and Terminer is granted under the Great Seal, four of the Lords or other Commissioners (*unus quorum*) therein named, must give a Precept under their Hands and Seals in Parchment, directed to the Sheriff of the County, or Stewart of the Stewarty that is not subject to, or dependent upon any County wherein the Session of Oyer and Terminer is to be held and kept, bearing Date fifteen Days at least before the Day of holding the Session, in the Form following:

The Name of the County, ss. A. B. Miles — C. D. — E. F. — H. — with their Additions or Designations, as they are titled in the Commission; *Justiciarii dicti Domini Regis, per literas*

Form of the Precept to the Sheriff for summoning a Session of Oyer and Terminer.

Form of the
Precept to the
Sheriff for
summoning a
Session of Oyer
and Terminer.

ras paten. ipsius Domini Regis nobis et aliis
et aliquibus quatuor vel pluribus nostrum con-
fect. ad Inquirend. per Sacrament. proborum
et legalium hominum de Comitatu. —
prædict. ac aliis viis, modis et mediis quibus
melius sciverimus aut poterimus, tam infra Li-
bertat. quam extra, per quos rei veritas me-
lius scire poterit et inquire, de quibuscunque
Proditionibus, Misprisionibus, Proditionum in-
surrectionibus, rebellionibus, contrafactur. Tom-
sur. Lotur. falsis fabricationibus et aliis falsitati-
bus Monetæ hujus regni Domini Regis Magnæ
Britanniæ * et aliorum regnorum sive Domi-
norum quorumcunque infra Comitatu, prædict.
tam infra Libertates quam extra, per quoscun-
que et qualitercunque habit. fact. perpetrat.
sive commiss. et per quos, vel per quem, cum
vel quibus, quando qualiter et quomodo, ac
aliis Articulis et Circumstantiis præmissa et eo-
rum quodlibet, seu eorum aliquod vel aliquod
qualitercunque concernen. plenius veritatem
Et ad easdem Proditiones et alia præmissa ha-
vice audiend. et terminand. secundum Leges
Statuta in hujusmodi casibus edit. et provis.
sign: Vic. ejusdem Comitatu. salutem. Et
parte dicti Domini Regis nunc, Tibi præcipi-
mus, quod non omit. propter aliquam Libertat.
in Balia tua, quin Venire facias coram nobis
et aliis Sociis nostris Justiciar. prædict. et
aliquibus quatuor vel pluribus nostrum apud
— in Comitatu. prædict. die —

* The Description of the Offences enumerated must agree with the Words in the Commission.

—prox. futur. omnes Prison. in Gaola
dicti Domini Regis Comitatus tui existen. pro
causis prædict. vel aliqua earum, una cum eo-
rum Attach. Indictament. et omnibus aliis Ad-
miniculis Prisonar. ill. qualitercunque tangen.
Ac viginti quatuor tam milites quam alios pro-
pos et legales homines Comitatus prædict. ad fa-
ciend. et recipiend. ea omnia et singula quæ
sunt ex parte dicti Domini Regis tunc et ibi-
dem injunguntur: Publici etiam Proclamari
fact. per totum Comitatum tuum quod omnes
illi qui sequi voluerint versus prisonar. ill. tunc
sunt ibi versus eos prout justum fuerit prosecutor.
Scire fac, etiam omnibus Justic. pacis Majo-
rib. et Baliis Libertat. Comitatus tui, quod tunc
sunt ibi ad faciend. ea quæ ad Officia sua perti-
nec. Et quod Tuipse et Subvic. tuus una cum
Baliis et Ministris tuis, tunc sitis ibi in propriis
personis vestris, ad faciend. ea quæ ad Officia
vestra pertinent, in hac parte fiend. Et habeas
ibi nomina Jur. Justiciar. pacis Major et Ba-
liorum præd. et eorum per quos eis sic Scire
feceris. Et hoc præceptum: Dat. apud———,
die———, anno regni Domini nostri Georgii,
Dei gratia, Magnæ Britanniae, Franciæ et
Hiberniæ Regis, fidei Defensoris, &c.

Form of the
Precept to the
Sheriff for
summoning a
Session of Oyer
and Terminer.

If the Session is to be holden within a
stewarty, that is not subject to, or depen-
dent upon any County, then the Precept
must be directed, Senescallo ejusdem senes-
callatus:—And, instead of Comitatus, the
Word senescallatus must be used through-
out.

The

The Precept must be signed and sealed by the Commissioners.

The Precept must be signed and sealed by four of the Commissioners at least one whereof to be of the *Quorum*: And delivered to the Sheriff or Under-sheriff speedily, or to the Stewart of such Stew-arty.

Return thereon by the Sheriff.

The Sheriff returns the Precept indorsed thus:—*Executio istius præcepti patet in quibusdam schedulis huic annexis*, with his Name thereto subscribed, and a List, in Parchment, of the Names of the Justices of Peace, Mayors and Bailiffs of Liberties—and another List of the Names of the Grand Jury-men, with their Additions or Designations and Places where they dwell annexed to the Precept.

The Justices of Peace to prove Informations, &c.

The Justice of Peace and Mayors are to prove such Informations and Examinations as have happened to be taken before them concerning any Prisoners; and Bailiffs of Liberties to prove their Summons of those Grand Jury-men which make Default and do not appear.

Procedure of the Court.

When the Lords or others, the King's Justices, and Commissioners meet on the Day and Place, for holding the Session appointed by the Precept, four of them whereof one must be of the *Quorum*, (having one of them learned in the Law, a Chairman), assemble in the Session-house and direct the Clerk of the Arraignment to call the Court; who (having first wrote down the Names of the Lords, and other Commissioners present) thereupon bids the

Crier

Crier make three Oyez, and repeat after him the Proclamation, thus;

“ My Lords, the King’s Justices, straightly charge and command all Manner of Persons to keep Silence, and hear his Majesty’s Commission of *Oyer and Terminer* for the County of——openly read, upon Pain of Imprisonment.”

Thereafter the Clerk reads the Commission; and, that being done, bids the Crier say, *God save the King*, and make one Oyez, and then repeat after him, thus;---

All Manner of Persons that have to do, before my Lords the King’s Justices of *Oyer and Terminer* for this County of——, draw near, and give your Attendance.”

And the Clerk bids the Crier repeat,--- Sheriff of this County of——return the Precept to you directed and delivered for summoning a Session of *Oyer and Terminer* to be holden here this Day upon Pain and Peril shall fall thereon.”---

Then the Sheriff, or Under-sheriff, delivers the Precept and Return thereof *pro pria manu* to the Chairman, who gives it immediately to the Clerk.

And the Clerk bids the Crier call all the Justices of Peace, Mayors, and Bailiffs of Liberties, thus:—“All Justices of Peace, Mayors, and Bailiffs of Liberties within this County of——answer to your Names as you shall be called, every one

“ at

Form of calling the Court

Sheriff called to return the Precept.

Justices of Peace, &c. called.

“ at the first Call, upon Pain and Peril
“ shall fall thereon.”

The Clerk marks with a Dote or Stroke of Ink, the Names of all that do appear, that those which make Default may be fined, if the Court please; or their Defaults spared and marked *parcatur*, if the Court think fit.

Grand Jury
called.

Thereafter, the Clerk bids the Crier call the Grand Jury, thus :—“ You good Men of the County of——summoned to inquire for our Sovereign Lord the King, and the Body of this County, answer to your Names, as you shall be called every one at the first Call, upon Pain and Peril that shall fall thereon.”

Defaulters
called.

And, having marked the Names of those who appeared, bids the Crier call the Defaulters, thus :—“ You good Men, that were even now called and made default, answer to your Names, and save your Fines.—*A. B.* come forth, or you lose 100 s. in Issues.”—So of the rest.

Sheriff-Bailiffs
sworn upon
the Summons
given to De-
faulters.

The Clerk bids the Crier swear the Bailiff *, (laying his Right-hand on the New Testament) *avoir dire*, thus :—“ I shall true Answer make to what the Court shall demand of you : So help you God ; and kisses the Book. — After which the Clerk asks him :—“ By the Oath you have taken, did you summon *A. B.* _____

* Bailiffs with us, are the Sheriff-officers, Officers of Burghs, and Justice of Peace Officers.

— to appear here this Day, to serve upon the Grand Inquest." — Then the Bailiff answers when, and how he was summoned, viz. upon what Day, if in Person, or by Ticket left at his House, with himself, or with whom: — And so of all that make Default.

Thereafter the Clerk turning his Face to the Court, and acquainting them, how many have appeared; saith to the Chairman, *Who will your Lordship please shall be Foreman?* — And, the Chairman naming him, the Clerk calls the Foreman, and bids him lay his Right-hand on the Book, and all the rest of the Grand Jury who did appear, to hearken to the Foreman's Oath, and swears him, thus:

The Grand Jury sworn.

You shall diligently inquire, and true Presentment make, of all such Matters and Things as shall here be given you in charge, or otherwise come to your Knowledge, touching this present Service: The King's Majesty's Council, your own, and your Fellows, you shall well and truly keep secret. — You shall present no Person for Hatred, Malice, or Ill-will; nor leave any thing unpresented for Fear, Favour or Affection, or for any Reward, Hope or Promise thereof: But in all your Presentments, you shall present the Truth, the whole Truth, and nothing but the Truth, according to the best of your Skill and Knowledge: So help you God. — And kisses the Book.

The Foreman's Oath.

And a Line being drawn from the Foreman's Name, he is marked sworn,

A a

thus,

thus, ---- *Jur. prior.* ---- Then the Clerk calls the rest of the Grand Jury, by three at a Time, and their Right-hands being held on the Book, the Crier swear them, thus ;

The Oath to
the rest of
the Jury.

The same Oath, that A. B your Foreman hath now taken before you on his Part, you, and every of you, shall well and truly observe and keep on your respective Parts: So help you God. ---- And must severally kiss the Book.

And having sworn, seventeen, nineteen, or one and twenty, being an odd Number, to avoid the Inconvenience of an equal Number, upon their Division of Voices, to retard the finding or not finding of any Bill, tho' there must be twelve at least agree to the finding of any Bill of Indictment brought before them. ---- The Clerk strikes a Line from every Name sworn thus---, and then marks them ---- *Jur.* ---- And bids the Crier count them, naming to him the Foreman first, and the rest that are marked sworn, as they are written in order, beginning at the Top of the Panel of their Names. ----- Their Number being agreeable to their Names, the Crier asketh them, if they be all sworn. And if they are so, the Clerk asketh Leave of the Court, if they will please to discharge those which did appear on the Grand Jury, and are not sworn, to depart the Court about their own Occasions. ---- And telleth them as the Court directs.

The

The Clerk thereafter bids the Crier make one Oyez, and repeat the Proclamation, thus ;

“ My Lords, the King’s Justices, command all Justices of Peace; and other Officers that have any Authority to take any Inquisitions, Recognizances, Examinations, or Informations of Offences, inquirable by his Majesty’s Commission of Oyer and Terminer, within this County of ———, That they forthwith deliver the Records of the same into this Court : And all others to keep Silence, whilst the Charge is in giving, upon Pain of Imprisonment.”

Proclamation to return Recognizances, Informations, &c.

The Chairman gives the Charge to the Grand Jury, setting forth their Duty, and the Matters inquirable by them, &c. ——— And the Clerk must file all Recognizances, and keep safe all Examinations, or Informations delivered in by the Justices of Peace.

Chairman’s Charge to the Grand Jury.

While the Charge is in giving, the Clerk to make for the Foreman a Copy in Paper, of the Names of all sworn on the Grand Jury, for him to know his Fellows, and call them by their Names, and collect their Voices in agreeing to find, or not agreeing to find any Bills brought before them. ——— And to deliver the whole Panel returned, to the Sheriff or his Under-sheriff, to ingross on Parchment a Panel of those only which are sworn, with their Additions or Designations, putting the

The Clerk of Arr. to make a Copy of the Jury for the Foreman, &c.

the Foreman's Name first, and the rest which are sworn as their Quality is, or as they are written in Order and sworn, in the Panel returned with the Precept, and draw down against the Names of all which are sworn, and written in the small Panel

a Column thus}, and mark *Jur.* and the

Sheriff to put his Name to that Panel.---

And the Sheriff, or Under-sheriff, forthwith to examine and deliver to the Clerk of Arraignments, the Panel of the Grand Jury which are sworn, to be filed on the Lace, with the Precepts and Schedules therewith returned.

After the Charge is given, the Clerk bids the Crier swear a Bailiff to keep the Grand Jury, thus: (laying his Right-hand on the Testament.)

Oath to a
Bailiff to
keep the
Grand Jury.

You shall diligently attend this Grand Jury, during this Session of Oyer and Terminer: You shall safely carry to them all such Indictments, Informations, and other Writings as shall be delivered you by the Court: And the same when re-delivered to you by the Grand Inquest, you shall bring back again, and deliver them safe to the Court, without any Alteration thereof: So help you God.

The Grand Jury use to go into some convenient Room provided for them near the Court, to hear the Evidence on the Bills brought to them, and to proceed together in their Business.

The Clerk bids the Crier call the Prosecutors (where any are bound to prosecute) to prefer their Bills, thus: --- "A. B. come forth and prosecute against C. D. or else you forfeit your Recognizance."

Prosecutors called to prefer their Bills.

And those that are upon Bail, and bound to answer, thus: --- "F. H. come forth, save thee and thy Bail, or else thou forfeits thy Recognizance." --- And the Bail, thus: --- "J. K. bring forth F. H. whom you undertook should appear here this Day, or else you forfeit your Recognizance."

The Clerk bids the Crier swear the Witnesses, whose Names are indorsed on every Bill of Indictment, thus:

The Evidence which you shall give to the Grand Inquest upon this Bill of Indictment against A. B. and F. H. shall be the Truth, the whole Truth, and nothing but the Truth: so help you God. --- And kisses the Book.

Witnesses Oath.

--- And the Clerk marks to every Witnesses's Name who is sworn --- *Jur.*

One of the Grand Jury should come from the rest, and see the Witnesses sworn to every Bill, and take the Bill and Witnesses along with him, to be examined before all the Grand Jury; and the Witnesses are to attend the Court again, after they have been examined by the Grand Jury, and not go away until dismissed by the Court.

One of the Jury should come from the rest to hear the Witnesses sworn, &c.

If any Bill of Indictment be exhibited against any Person or Persons, and the Grand

All Bills must be indorsed by the Jury.

Grand Jury do find the Bill, then the Foreman, or some of them, indorse and write on the Back of the Bill these Words *Billa vera*. ---- And if there be more Persons than one indicted in one Bill, and the Grand Jury have Evidence to satisfy themselves, to find the Bill against one or more and not against some others, then the Grand Jury must indorse their Bill, thus *Billa vera quoad A. B. & C. D. Ignoramus quoad E. F. & G. H.* ---- But if the Grand Jury have not Evidence to satisfy them, to find a Bill against any one Person directed in the Bill, then must indorse such Bill *Ignoramus*.

What if there be a Division of Voices.

If the Grand Jury, upon a Division of Voices, concerning the finding, or not finding of any Bill, come into Court to declare their Opinions, it is usual to collect Voices from the last in the Panel, and backwards up to the first, whereby the Foreman declares his Opinion last, for, against the finding of the Bill. --- But, after having heard Evidence, twelve must agree to find it *Billa vera*, or else indorse it, *Ignoramus*, and deliver it into Court to be filed amongst other Bills.

Method of delivering in the Bills, &c.

When the Grand Jury have agreed upon the finding, or not finding of any Bill before them, and indorsed it accordingly, then they are to bring the same into Court. ----- And being come into Court the Clerk saith, *You Gentlemen of the Jury quest answer to your Names: ----* And wh

he has called them over by the Panel, he
 keth them, *Gentlemen, are you agreed of*
Bills? ---- If they be agreed on any,
 takes them, and saith, *You are content*
Court shall amend Matter of Form and
Latin, altering no Matter of Substance
about your Privity. ---- Then he sepa-
 res the Bills indorsed, *Billa vera*, from
 those indorsed *Ignoramus*: And, standing
 towards the Judges, saith, ---- *Billa vera*
against A. B. for High Treason: ---- Billa
vera against C. D. for Misprision of High
Treason: ---- Billa vera against F. G. for
High Treason. ---- Ignoramus quoad H. J.
on the same Bill for High Treason.

if an Indictment be returned by the Grand
 jury, *Billa vera quoad* some of the Parties
 indicted, and *Ignoramus quoad* the rest, ----
 the Clerk strikes a Score with Ink through
 the Names of those returned *Ignoramus*,
 that the Bill may be *substantive quoad* those
 against whom it was returned *Billa vera*,
 as if the rest had not been indicted.

if any of the Bills of High Treason, or
 Misprision of High Treason, found by the
 Grand Jury, be such as that the Trials there-
 are regulated by the Statute of the 7th
 of *William*, --- then the Clerk of Arraign-
 ments must call to the Keeper of the Prison,
 bringing such Prisoner for such High Treason,
 to the Bar of the Court, --- and the Clerk,
 distinguishing his Person, must bid him hold
 up his Hand, and may ask him, What his
 Name is? and what Name and Title he

FORM of
 TRIAL upon
 the Statute
 7th of W. III.

The Prisoner
 in High
 Treason to
 hold up his
 Hand.

What if he
be wrong na-
med or de-
signed.

The Prisoner
for Misprision
of Treason
not to hold up
his Hand, &c.

is commonly known by? ---- And if he own the Name and Addition of Title Designation given him in the Indictment then he is to tell him, that he stands indicted by that Name, of High Treason and if he require a Copy of the Indictment, (paying for it) he shall have it delivered to him five Days at least, before he be tried for the same, to advise with Council to plead and make his Defence. But if the Name or Title of such Prisoner be mistaken, the Grand Jury should send for into Court, and the Name of the Prisoner and his Title, which he owns before them, must be made right in the Indictment, by and with the Privy and Consent of the Grand Jury, who, after the Bill is amended, must take it into some of their Hands, and deliver it back into Court indorsed *Billa vera*.

But if any Prisoner be indicted for Misprision of High Treason, to be tried according to the foresaid Statute, the Clerk must call to the Keeper to set him at the Bar and know his Name, but not to disgrace him, by making him hold up his Hand. He is to have a like Copy of his Indictment, as the Prisoner in High Treason and the Clerk tells him, that he stands indicted of Misprision of High Treason, the Name of —, for that he —, and asketh him, Whether he be guilty of that Offence of Misprision, or not? and takes his Confession or Plea only. ----

does not ask him how he will be tried; as is done in Cases of High Treason.

If there be no other Prisoners than for the like Treason, and Misprision of Treason, to be tried according to the last mentioned Statute, then the Court may adjourn for seven or eight Days; so that Copies of the Indictments may be made, and delivered to the Prisoners respectively, five Days at least, before they are to plead to their Indictments.

The Court may adjourn till the Prisoners are served with their Indictments.

And the Clerk, as soon as he can, should make a Court-paper of the Day and Place of the Sessions, the Names of the Justices present, and of the Persons indicted, and for what, briefly, and deliver it to the Chairman, to inform him of the Names of the Prisoners, and Persons indicted, and their Offences, for him to write his own Notes upon, as the Proceedings shall require. ---As also to know from the Chairman, to what Time he is pleased the Court should be adjourned, and send to the Grand Jury, call them over, and adjourn them to that Time; which is done after this Manner:

The Clerk to make a Court-paper for the Chairman.

Gentlemen of the Grand Inquest, the Court dismisses you for this Time, and enjoins you, on Pain of L. 10 a Piece, to give your Attendance here again at three of the Clock in the Afternoon; or, To-morrow Morning at eight of the Clock; or, on the——Day of ——at eight of the Clock in the Forenoon.

Adjournment of the Grand Jury,

B b

Thereafter

And of the
Court.

Thereafter he bids the Crier make three Oyez, and repeat the Adjournment of the Court, thus :

“ All Manner of Persons, that have any
“ more to do before my Lords the King’s
“ Justices, (and other Commissioners) of
“ Oyer and Terminer, for this County of
“ ———may depart hence, at this Time,
“ and give their Attendance here again, at
“ three of the Clock in the Afternoon;
“ or, To-morrow Morning at eight of the
“ Clock, or, on the——Day of this In-
“ stant——or, the——Day of ——
“ next, at eight of the Clock in the Fore-
“ noon.——GOD *save the King.*

And the Clerk is to write an Entry, exactly of the Time and Place to which the Court is adjourned.

Follows the Form of a Caption of an Indictment for High Treason, or Misprision of High Treason, with a true Copy of the Indictment itself, as incident thereunto, to be delivered to the Party indicted, five Days at least before he plead.

Form of a
Caption of In-
dictment for
High Treason,
&c.

THE Name of the County ss. Memorandum quod ad Sessionem Domini Regis de Audiend. et Terminand. tent. pro Domino Rege apud——in paroch. de——in Comit. ——die——die——anno regni Domini nostri Georgii Secundi, Dei gratia, Magnæ Britanniae, Franciæ et Hiberniæ, Regis, fidei Defensoris,

Defensoris, &c. Coram (four Commissioners at least with their Additions or Designations, as they are titled in the Commission, whereof one must be of the Quorum) ac aliis sociis suis Justiciar. dicti Domini Regis per Literas paten. ipsius Domini Regis eis et aliis et quibuscunque quatuor vel pluribus eorum sub Magno Sigillo suo Magnæ Britanniae confect. (Quorum præfat. J. C. E. F. G. H. iidem Domino Regi unum esse voluit) ad Inquirend. per Sacrament. proborum et legalium hominum de Comitatu. — prædict. ac aliis viis modis et mediis quibus melius sciverint aut poterint, tam infra Libertates quam extra, per quos rei veritas melius sciri poterit et inquiri, de quibuscunque Proditionibus, Mispri-
sonibus, Proditionum, Insurrectionibus, Re-
bellionibus, Controfactur. Tonsur. Lotur. falsis
Fabricationibus, et aliis Falsitat. Monetæ hujus
regni Domini Regis Magnæ Britanniae * et
aliorum Regnorum sive Dominiorum quorum-
cunque infra Comitatu. prædict. tam infra Li-
bertates quam extra, per quoscunque et quali-
tercunque habit. fact. perpetrat. sive commiss.
et per quos, vel per quem, cui vel quibus,
quando qualiter et quomodo: Ac de aliis Arti-
culis et Circumstantiis premissa et eorum quod-
libet, seu eorum aliquod vel aliqua qualitercun-
que concernen. plenius veritatem, et ad eas-
dem Proditiones et alia præmissa hac vice Au-
diend. et Terminand. secundum Leges et Statuta
in

Form of a
Caption of an
Indictment for
HighTreason,
&c.

* The Description of the Offences enumerated must agree with the Words in the Commission.

in hujusmodi casibus edit. et provis assign. per Sacramen. G. B. (naming all the Grand Jury-mens Names without their Additions) proborum et legalium hominum de Comitatu. — prædict. ad tunc et ibidem jurat. et onerat. ad Inquirend. pro dicto Domino Rege et corpore Com. prædict. præsentat. existit. prout sequitur in his verbis sequen. Le oom. ss. Jur. pro Domino Rege super Sacramen. suum præsentant quod, &c. verbatim as in the whole Indictment. But not the Names of the Witnesses.

When the Session is held within a Stewarty, that is not subject to, or dependent upon any County, and the Precept is directed *Senescallo senescallatus*, then *senescallatus* must be used instead of *Comitatus* throughout the Caption. — And a Witness must attend the Court at the Time of the Prisoner's pleading, to prove the Delivery of the Copy of the Indictment to the Prisoner, if there should be Occasion.

The sitting of the Court upon the first Adjournment.

The Commissioners being met at the Time and Place to which the Court was adjourned, the Clerk writes down the Day and Place, and Names of the Justices which then meet. — And bids the Crier make three Oyez, and repeat after him, thus:
 “ — All Manner of Persons, that have
 “ any more to do before my Lords the
 “ King's Justices of Oyer and Terminer, for
 “ this County of —, and were ad-
 “ journed

journed over to this Time and Place;
draw near, and give your Attendance."

Thereafter the Clerk bids the Crier call
over the Grand Jury, by the Panel of their
Names, and Mark who appear, and desire
them to go to some Room near the Court,
and keep together, and know where they
go, that the Court may send to them upon
any Occasion of Business.—If any Grand
Jury-man should not appear, whereby Bu-
siness may be retarded or disappointed,
they ought to be fined for such Default.

—And the Clerk should deliver to the
Chairman, a Court-paper of the Day of
sitting upon this Adjournment, the Names
of Commissioners present, and of the Pri-
soners and others, if any indicted, and for
what Offences.

The Prisoner being set to the Bar, the
Clerk saith to him, *A. B. hold up thy Hand.*
Thou standest here indicted by the Name of
A. B. late of——for that thou, the——Day

(prout in the Indictment: But it
must be read to him in the English Lan-
guage, and not in the Latin Tongue in
which the Indictment is written).—How

art thou, A. B. art thou guilty of this High
Treason, or not guilty?—If the Prisoner an-

*swer not guilty, the Clerk saith, Culprist *,*
How wilt thou be tried?—and the Prisoner

answer,---By God and the Country.---
the Clerk saith, God send thee a good Deliverance.

And thereafter must write over the Pri-
soner's

Grand Jury
called, &c,

Arraignment
of a Prisoner
for High
Treason.

What if he
plead, Not
guilty,

* (i. e.) *Culpabilis es, paratus sum verificare.*

Or guilty?

Arraignment
of a Prisoner
for Misprision
of Treason.

soner's Name on the Indictment, thus, *per Adjournament. — die 17 — po. se. (i. e. posuit se super Patriam. —* But, if he pleads guilty to the Indictment, the Clerk must write over his Name, on the Indictment *per Adjournament. — die — 17 — cogn. —* and then bid the Keeper take him from the Bar.

A Prisoner indicted for Misprision of High Treason, being set to the Bar is not required to hold up his Hand. — The Clerk says *You C. D. stand here indicted by the Name C. D. — prout in the Indictment (to be charged in the English Language above); —* and, the Prisoner being so charged with the Indictment, the Clerk asks him, *Are you guilty of this Misprision of High Treason, or not guilty?* If he answers, *guilty;* — Then he enters over his Name the Indictment, *per Adjournament. — die 17. — po. se.* or if he confesses, *cogn.* and bids the Keeper take him from the Bar.

Form of the Venire Facias to the Sheriff summoning a Jury to try the Prisoners.

Venire Facias
to the Sheriff
for summoning
a Jury to try
the Prisoners.

The Name of the County *ss. A. B. — C. D. — E. F. —* and *G. H.* with the Titles as in the Commission, *Justiciarii Dicti Domini Regis per Literas paten. inquit Domini Regis nobis et aliis et quibuscumque quatuor vel pluribus nostrum sub Magno Sigillo suo Magnae Britanniae confect. ad Inquirendum per Sacram. proborum et legalium hominum*

mitat. prædict. ac aliis viis modis et mediis
 ibus melius sciverimus aut poterimus tam in-
 a Libertes quam extra, per quos rei veritas
 lius sciri poterit et inquiri, de quibuscun-
 e Proditionibus, Misprisionibus Proditio-
 m, Insurrectionibus, Rebellionibus Contra-
 tur. Tonsur. Lotur. falsis Fabricationibus,
 aliis Falsitat. Monetæ hujus Regni Domini
 is Magnæ Britannicæ * et aliorum Regno-
 rum sive Dominiorum quorumcunque infra
 mitat. prædict. tam infra Libertates quam
 ra, per quoscunque et qualitercunque habit.
 t. perpetrat. sive commiss. et per quos, vel
 quem, cui vel quibus, quando, qualiter,
 quomodo, ac de aliis Articulis et Circum-
 stantiis præmissa, et eorum quodlibet seu eorum
 quod vel aliqua qualitercunque concernend.
 ius veritatem. Et ad easdem Proditiones
 alia præmissa hac vice Audiend. et Termi-
 d. secundum Leges et Statuta in hujusmodi
 bus edit. et provis assignan. Vic. ejusdem
 mitat. Salutem. Præcipimus tibi quod
 omittas propter aliquam Liberta-
 in Balia tua quin Venire Facias coram
 et aliis Sociis nostris apud——in Pa-
 ——, in Comitatus tuo die——
 ——die instantis——duodecim pro-
 et legales homines de vicineto Paroch.——
 mitat. tuo. Quorum quilibet habeat terras
 tenementa annui valoris quadraginta soli-
 denis Sterlingorum ad minus, per quos rei
 veritas melius sciri poterit. Et qui A. B. nu-
 per

Venire Facias
 to the Sheriff
 for summoning
 a Jury to try
 the Prisoners.

The Description of the Offences enumerated must
 with the Words of the Commission.

per de (the Prisoner's Name with his Addition as in the Indictment) *nulla affinitas attingunt, ad recogn. super Sacram. suum prædict. A. B. Culpabilis sit de quibusdam altis Proditionibus unde judicat. existit. ne, quia idem A. B. posuit se in Juram. lam, et habeas ibi tunc nomina Jur. prædict. Et hoc præceptum. Dat. apud _____ in P. roch. in Comitatu prædict. _____ die _____ anno Regni dicti Domini nostri Georgii Secundi, Dei gratia, Magnæ Britannicæ, Franciæ et Hiberniæ Regis, Fidei Defensoris, &c.*

If the Session be held in such a Stewary, as is before described, then this Warrant must be directed, *Senescallo ejusdem senescallatus*, and, instead of *Comitatus*, the Word *senescallatus* is to be used.—The Precept must be signed and sealed by the Commissioners, (*unus Quorum*) and Testes the Day of that Session held by Adjournment when the Prisoners pleaded.

What Number of Jurors may be returned on the Precept.

Although the Precept be but for twelve Jurors, yet the Sheriff useth to return a Panel of a sufficient Number of Freeholders; because, in Cases of High Treason the Prisoner may peremptorily challenge thirty five, and there must so many more appear, as to make up a Jury of twelve to try the Prisoner, besides all those who may duly be challenged.—But no Person can challenge peremptorily any of the Jurors, upon a Trial for Misprision of Treason, the Offence not being capital.

The Clerk should know from the Chair-
man to what Time he is pleased the Court
shall be adjourned, and send for the Grand
Jury, call them over, and adjourn them
to that Time, in Manner as in the first Ad-
journment, or discharge them if the Court
then please, saying to them to this Effect ;
Gentlemen of the Grand Inquest, the Court
thanketh you for your good Service, and doth
discharge you.----And thereafter bids the
Crier make three Oyez, and repeat the
Adjournment of the Court as before men-
tioned, to such Day, Hour and Place as the
Court shall direct.

Second Ad-
journment of
the Court.

The Court being met at the Time and
Place to which it was adjourned, the Clerk
writes down the Day and Place, with the
Names of the Justices then met, and
makes Proclamation, and calls the Court
as at the Sitting upon the first Adjournment,
which was after an Intermission of some
Days :---Then he calls over the Grand Ju-
ry, if they were not discharged the sitting
before ;---and thereafter asks the Under-
sheriff, to return the Jury of Freeholders
to try the Prisoners, and unless he have the
Precept and Panel ready, he must be
called in Form, thus :

Sitting of the
Court upon the
second Ad-
journment.

“ Sheriff of this County of ——— re-
turn the Precept to you directed and de-
livered, for summoning of a Jury to try
between our Sovereign Lord the King,
and the Prisoners that shall be at the Bar,
returnable here this Day, on Pain and
Peril will fall thereupon.”

Proclamation
for Return of
the Precept.

C c

The

Method of re-
turning the
Precept.

The Under-sheriff must indorse on the Back of the Precept, thus; *Executio istius præcepti patet in panello huic annex.*—Which Panel must be in Parchment, intitled, *The County ss. Nomina Jur. ad Triand. inter Dominum Regem, et*——*Prisonar. ad Bar-*
ram, or to that Effect; and the Names of all the Freeholders therein written, one under another, with their Additions of their Dwelling-places and Titles; — and the Panel must have Margin-room, to mark their Appearances and Challenges, which may happen against their Names, and an Inch of Room on the Right-hand-side of the Panel, to draw a Line from their Names, who shall be sworn, and to mark them, thus:——*Jur.* as they are sworn.

Jury and Wit-
nesses called.

The Clerk bids the Keeper set the Prisoners (to be tried) to the Bar, as they shall be named to him; and then, that being done, bid the Crier repeat,—You
“ good Men, that are impanelled to try
“ between our Sovereign Lord the King,
“ and the Prisoners at the Bar, answer to
“ your Names; every one at the first Call,
“ on Pain and Peril shall fall thereon.”—
And marks those who appear with a visible Dot of Ink before their Names;—and the Crier to call those, who made Default, over again, thus:—“ You of the Jury,
“ which were even now called, and made
“ Default, answer to your Names, and
“ save your Fines;”---and marks them who appear, and acquaints the Court how many

many do appear in whole.—And then the Clerk calls the Witnesses for the King, whose Names are indorsed upon the Indictments against the Prisoners, who are to be tried, and to know if the Witnesses are all ready.

Thereafter the Clerk asks the Court, which Prisoner they intend should be tried first; and the Keeper is to set him to the Bar, and call to know if the Witnesses against him are all ready, and take away the other Prisoners from the Bar.—The Clerk asks him who is to be tried, if he has had a Copy of the Panel of the Jury delivered to him two Days (or more) since; if he should deny it, some Witnesses for the King, who delivered the Copy to him, must prove the Delivery thereof.

Prisoners set to the Bar.

It is thought most expedient to try but one Prisoner at once; for, if more should be tried together, every one, having the Benefit of challenging thirty five of the Jury peremptorily, may challenge so many, and make such Confusion, as that, out of all those on the Panel, there will not be twelve left to try the Prisoners, and so put off the Trial, till by a new Precept, the Sheriff can get another Jury.

Only one Prisoner should be tried at a Time.

The Clerk saith to the Prisoner, “ You
“ *A. B.* now Prisoner at the Bar, these
“ Men which you shall hear called, and
“ personally appear, are to pass between
“ our Sovereign Lord the King and you,
“ upon Trial of your Life and Death; if
“ you

Call to the Prisoner to challenge the Jury.

“ you will challenge them, or any of them,
 “ you must speak unto them as they come
 “ to the Book to be sworn, before they be
 “ sworn.”

Method of
 such Chal-
 lenge.

If the Prisoner challenge any of the Jury, the Clerk must forbear swearing them, and mark them as they are challenged, with Figures on the Margin against their Names, 1, 2, 3, &c. in the Order as they are in that Panel, until he hath peremptorily challenged thirty five, and no more.--- The different Challenges to Jurors may be seen in *Coke's 1st Inst. Cap. 12. Sect. 234. Tit. (Rents).*

The Clerk calls (*R. S.*) the first Jurymen of the Panel, bids him look upon the Prisoner, and lay his Right-hand upon the Book; and if the Prisoner do not challenge him, the Crier to swear him, thus;

Jurymen's
 Oath.

You shall well and truly try, and true Deliverance make, between our Sovereign Lord the King, and the Prisoner at the Bar, whom you shall have in charge, and a true Verdict give according to your Evidence: So help you God. And kisses the Book.

Method of
 swearing the
 Jurors.

Then the Crier saith to the Clerk, *Jur. R. S.* and so proceeds, until twelve be sworn one by one, each looking on the Prisoner in like Manner, as the first Jurymen did, when he was sworn. --- And the Clerk bids the Crier count them, who naming all the twelve, expresses their Number. --- Then he asketh the Jurymen, *Gentlemen, are ye all sworn?* --- In case any

of the twelve says, he is not sworn, he, or some other that appeareth, (and is not challenged) is sworn in like Manner, as the others of the Jurymen were, and the Crier counts them over again, that he may be sure twelve are sworn.

Thereafter the Clerk bids the Crier repeat: — “If any one can inform my Lords the King’s Justices, or King’s Advocate-General, before this Inquest be taken, between our Sovereign Lord the King, and the Prisoner at the Bar, let him come forth, and they shall be heard; for the Prisoner stands at the Bar upon his Deliverance: And all others that are bound by a Recognizance, to give Evidence against the Prisoner at the Bar, come forth and give your Evidence, or else you forfeit your Recognizances.”

Proclamation
to inform and
give Evidence
at the Trial

The Clerk gives the Under-sheriff the large Panel, to write out the Names and Additions of the Jurymen only who are sworn, upon a small Parchment Panel, entitled thus, *Nomina Jur. inter Dominum Regem & A. B. Prisonar. at Barram*: And the Sheriff puts his Name thereto.

The Clerk afterwards desires the Prisoner to hold up his Hand: And saith, “You of the Jury look upon the Prisoner, and hearken to his Cause: He stands indicted in this County of ———, by the Name of *A. B.* late of ———, (as in the Indictment) for that he ———

Charge to the
Jury.

“ (reading

Charge to
the Jury.

“ (reading all the Indictment in the Br
“ *tish* Tongue, and not in *Latin* to the
“ End of it.)—Upon this Indictment
“ hath been lately arraigned, and there
“ unto he hath pleaded, Not guilty; and
“ for his Trial, hath put himself upon
“ God and the Country, which Country
“ you are.—Your Charge is, to inquire
“ whether he is guilty of this High Treason,
“ in Manner and Form as he stands
“ indicted, or not guilty.—If you find
“ him guilty, you shall inquire what
“ Goods or Chattels, Lands or Tenements
“ he had at the Time of the said High
“ Treason committed, or at any time since
“ —If you find him not guilty, you shall
“ inquire whither he fled for it: —If you
“ find that he did fly for it, you shall inquire
“ of his Goods and Chattels, as
“ you had found him guilty.—If you find
“ him not guilty, and that he did not fly
“ for it, say so, and no more, and hear you
“ Evidence.”

If the King's Council do not open the Cause, and speak to it, which this is the proper Time to do, then the Clerk must call the Witnesses, indorsed on the Back of the Indictment, and bid them lay their Right-hands upon the Book, and swear them to give Evidence, thus;

Oath of Witnesses for the King.

The Evidence which you, and every of you shall give to the Court, and the Jury, now sworn for our Sovereign Lord the King, against the Prisoner at the Bar, shall be the Truth.

truth, the whole Truth, and nothing but the truth: So help you God.

After any Witness against the Prisoner hath done giving his Evidence, the Prisoner may ask such Witness any Questions; --- but before they make Answer, the Prisoner must swear them, thus;

The Evidence which you, and every of you, shall give on the Behalf of the Prisoner at the Bar, shall be the Truth, the whole Truth, and nothing but the Truth: So help you God.

Oath of Witnesses for the Prisoner.

The Prosecutor first examines the Witnesses produced against the Prisoner, and then the Prisoner may cross-examine them: And so the Prisoner first examines his own Witnesses; after which the Prosecutor may cross-examine them.——The Reply belongs to the Prosecutor.

Method used in examining the Witnesses.

When all the Evidence for and against the Prisoner, and the Prisoner himself and his Council, have been heard, and the Chairman hath summed up the Evidence to the Jury, ---- then the Clerk bids the Prisoner swear a Bailiff to keep the Jury, thus;

You shall well and truly keep this Jury without Meat, Drink, Fire or Candle, you shall not suffer any Person to speak unto them, nor yourself, unless it be to ask them, whether they are agreed of their Verdict, unless they shall be agreed of their Verdict: So help you God.*

Bailiff's Oath to keep the Jury.

The

* If in the Night, the Word Candle to be omitted.

The Bailiff is to take them to some convenient Room, to be provided for that Purpose, and lock them in; and attend at the Door, until they let him know they are agreed; and then he is to let them out, and bring them into the open Court to give their Verdict, when the Court is sitting: for no Verdict in Cases of Treason, or Misprision of Treason, can be given in private, before any of the Justices, out of Court.

Manner of
giving their
Verdict.

When the Jury comes into Court to give their Verdict, the Clerk saith, *Gentlemen of the Jury answer to your Names*; then he calls them by their Names (as in the small Panel, of those only who were sworn) and hearing them answer to their Names, he asks, *Are ye agreed of your Verdict?*---they say, *Yes*, the Clerk shall ask them *Who shall say for you?*---The Jury must answer, *The Foreman*,---The Clerk desires the Keeper to set the Prisoner to the Bar, and thereafter, saith, *A. B. hold up thy Hand*: "You of the Jury look upon the Prisoner. How say you; is *A. B.* guilty of the High Treason of which *A. B.* stands indicted, or *not guilty*?---If they say *guilty*,---the Clerk asks, *What Goods or Chattels, Lands or Tenements, have he at the Time of the said High Treason committed, or at any Time since to your Knowledge?*---Jury. *None.* Then he adds to the *po. se.* before written over his Name in the Indictment: *die* ——— *die* ——— 17 ——— *Cull.*

vel terr. null. * “Hearken to your Verdict as the Court hath recorded it: You say that *A. B.* is guilty of the High Treason, whereof he stands indicted: And you say, he had no Goods or Chattels, Lands or Tenements, at the Time of the said High Treason committed, or at any Time since to your Knowledge: and thus you say all.”—And then desires the Keeper to take *A. B.* the Prisoner from the Bar, and look to him, for he stands convicted of High Treason.

If the Jury say, *not guilty*, the Clerk asks,---*Did he fly for it?*---Jury answer, *Not that we know of.*—Then the Clerk bids the Prisoner, *Down upon your Knees, and say, God save the King and the Honourable Bench.*—Adds to the *po. se.* (over his Name in the Indictment) *Et die — die —* 17—*Non Cull. nec se retraxit quietus:*—And says, “Gentlemen of the Jury, hearken to your Verdict as the Court hath recorded it: You say, That *A. B.* is *not guilty* of the High Treason whereof he stands indicted, and that he did not fly for it; and so you say all.”—And desires the Keeper to take away the Prisoner from the Bar.

What if the Prisoner is found, Not guilty?

If the Prisoner be found guilty, and no other found so for the like Offence but himself; the Clerk asks the Court, *Will your Lordships please, that the Prisoner shall*
D d be

Call of the Prisoner to Judgment.

* (i. e.) *Culpabilis, Catalla vel terr. nulla.*

be called up to Judgment?—If the Court so direct, then the Clerk bids the Keeper fetch *A. B.* to the Bar, and says, *A. B. hold up thy Hand.* “Thou hast been indicted of
 “ High Treason, and thereunto hast pleaded
 “ ed, *not guilty*; and, for thy Trial, hast
 “ put thyself upon God and the Country
 “ which Country have found thee *guilty*
 “ What canst thou now say for thyself
 “ why the Court should not give thee
 “ Judgment to die, according to the
 “ Law?”

The Prisoner having alledged and said what he hath to say to the Court, on his Behalf, and the Court signify their Pleasure to give him Judgment,—the Clerk bids the Crier make Proclamation once and repeat, thus:

Proclamation
before Judgment.

“ My Lords, the King’s Justices and
 “ other Commissioners, straightly charge
 “ and command all Manner of Persons to
 “ keep Silence while Judgment is giving
 “ upon Pain of Imprisonment.”—The
 Chairman, or some other Commissioner gives the Judgment.—And the Clerk desires the Keeper to take the Prisoner from the Bar.

Method of entering Judgment.

The Clerk must enter over the Prisoner’s Name in the Indictment, (to what he had before entered as aforesaid) these Words, *Habet Judicium prout patet in dorso Indictamenti*, and writes the Judgment on the Back of the Indictment, because it will be several Lines, and cannot be entered

entered over the Prisoner's Name, in that Line within the Indictment.

Thereafter the Clerk bids the Crier make three Oyez and Proclamation as before, for all Persons to depart, and to give their Attendance again at the same Place, or at——(some other proper and known Place) in the Parish of——, in this County of——, on the——Day of——next to come, at nine of the Clock in the Forenoon, or two in the Afternoon.

Adjournment
of the Court.

The High Treasons which are expressly excepted in the Statute above mentioned, and all other High Treasons not regulated, to be tried according to that Statute, or according to some particular Statute-law, if committed in that County, may be tried by the same Commission of *Oyer and Terminer* above mentioned, according to the Course of the common Law of *England*:---And, as it now stands, the Prisoners are to have their peremptory challenges, of thirty five of the Jurors returned to try them, if they demand it: And, by the Statute ^z, the Witnesses are to be sworn on the Behalf of the Prisoners upon their Trials; but such Prisoners must plead to, or confess their Indictments, as soon as the Bills are found against them by the Grand Jury, if the Court then cause them to be arraigned, and require them to plead; or else the Court may give Judgment against them for refusing to plead, or for standing mute: ---But

How High
Treason and
Misprision of
High Treason,
not restrained
to the Method
directed by
the Act 7.
W. III. shall
be tried.

^z Annæ c. 9.

—But such Prisoners must not have Copies of the Indictments which are against them, nor the Names of the Jurors returned to try them, delivered to them, nor can *de jure* demand of the Court to assign them Council to advise with; but, as soon as any of the Prisoners have pleaded, *not guilty*, four of the Justices and Commissioners, (*unus Quorum*) may sign and seal a Precept to the Sheriff of the County, to return a Jury of Freeholders, to appear at some Hour of the same Day in which the Bill was found, and on which the Prisoners have pleaded; or at some Hour of the next, or other Day, as the Court shall think fit: And, when the Sheriff returns such Precept, with a Schedule of Freeholders Names annexed, and which are summoned, and do appear, and the Witnesses for the King are ready, the Court may proceed to the Trial of such Prisoners.

In Cases where the Prisoner and Witnesses, do not understand the *British Language*, Interpreters must be procured and sworn, as follows: (The Clerk bids him lay his Right-hand upon the Book, and hearken to his Oath.)

Oath to interpret to the Prisoner when he does not understand the British Language.

You shall well and truly interpret to J. F. now Prisoner at the Bar, the High Treason whereof he stands indicted, as the Court shall direct you; and also the Questions and Demands, which shall be made by this Court concerning the same Treason whereof he stands here indicted; and also shall well and truly interpret

interpret unto this Court, the Answers which the said J. F. the Prisoner, shall thereunto give :—So help you God. And kisses the Book.

The Oath to interpret to the Witness, as follows: *You shall well and truly interpret unto L. M. a Witness here produced on Behalf of his Majesty, against J. F now Prisoner at the Bar, the Questions and Demands which shall be made to the said Witness by this Court, concerning the High Treason whereof the said Prisoner stands here now indicted, and you shall also well and truly interpret unto this Court, the Answers which the said L. M. shall thereunto give :—So help you God. And kisses the Book.*

Oath to interpret to a Witness in the same Case.

The Chairman or some other Commissioner, usually makes some Speech to the Prisoner standing before him at the Bar, concerning the High Treason he stands convicted of; and thereafter gives Judgment against him, thus:

“ You *A. B.* are to be led to the Goal from whence you came, and from thence you are to be drawn, upon a Hurdle to the Place of Execution, and there you are to be hanged by the Neck, and, being alive, to be cut down, and your privy Members to be cut off, and your Bowels to be taken out of your Belly, and there burnt, you being alive; and your Head to be cut off, and your Body to be divided into four Quarters, and that your Head and Quarters to be
“ disposed

Judgment against a Man in all Cases of High Treason, except Treasons concerning the Coin.

“ disposed of where his Majesty shall think
“ fit.”

This is the Judgment upon Men in all Cases of High Treason, except counterfeiting, clipping, washing, rounding, filing, impairing, diminishing, falsifying, scaling or lightening the Coin, and except all Offences made Treason by the Statutes of the 8th and 9th of K. *William*.——The Judgment in these Cases is as follows :

Judgment against a Man for Treasons concerning the Coin.

“ You *C. D.* are to be led to the Goal
“ from whence you came, and from thence
“ you are to be drawn on a Hurdle to the
“ Place of Execution, and there you are
“ to be hanged by your Neck until you
“ be dead.”

The Judgment against Women in all Cases of High Treason, is as follows :

Judgment against a Woman in all Cases of High Treason.

“ You *E. L.* are to be led to the Goal
“ from whence you came, and from thence
“ you are to be drawn upon a Hurdle to
“ the Place of Execution, and there you
“ are to be burned with Fire until you be
“ dead.”

The Form of proceeding when a Woman convicted of High Treason, pleads Pregnancy.

When a Woman is indicted and convicted of High Treason, and hath had Judgment given against her, then the Clerk of Arraignments must call the Woman to be set to the Bar again, (as the Manner is in that Behalf), and then asks her, What she can say for herself in stay of Execution according to the Judgment given against her? ---- If she say, that she is great with Child, and prayeth a Jury of Matrons, or motherly

motherly Women, to inspect and try whether she be with Child or not; that is granted to her, and always used to be granted in the like Case.---Thereupon the Clerk addeth to the former Entry over her Name upon the Indictment, *placitat pregnan.* and the Court commands the Sheriff of the County, immediately to cause to come twelve good and motherly Women, by whom the Prisoner's Plea of *Pregnancy* may be tried, and who are not of Kindred to the Prisoner, to handle and inspect her Body and secret Parts, because the Prisoner puts herself upon that Jury.--- And when the Jury of Matrons aforesaid, and a Panel of their Names are brought by the Sheriff into Court, the Clerk is to call them by the Panel, and swear 12 of them, desiring them to lay their Right-hands upon the Book, and look upon the Prisoner, and hearken to their Oath, thus:

You shall diligently inquire, search and try whether E. L. now Prisoner at the Bar, be with quick Child or not, and thereof give a true Verdict, according to the best of your Skill and Knowledge :---So help you God. and kisses the Book.---- And so on, until twelve Matrons are sworn, as aforesaid; and then the Clerk to name the twelve sworn, and bid the Crier count them.

Thereafter bids the Crier swear a Bailiff, to keep the Jury of Matrons, thus:

You shall well and truly keep this Jury of Matrons, without Meat, Drink, Fire, or Candle;

Oath of the
Jury of Ma-
trons.

Bailiff's Oath
to keep the
Matrons.

Candle * ; you shall not suffer any Person but the Prisoner to speak to them, nor you yourself, unless it be to ask them whether they are agreed of their Verdict, until they shall be agreed : ---- So help you God. And kiss the Book.

Manner of
giving their
Verdict.

Then the Bailiff is to take the Jury of Matrons, to some convenient private Room and the Goaler to take the Prisoner to them, to be inspected by them ; and the Matrons having duly searched and inspected the Prisoner, and conferred thereof together, and agreed to give their Verdict must be brought again into Court,---and the Clerk saith, " You good Women " the Jury of Matrons answer to you " Names." ----- And they having answered, he asks them, *Are you agreed of your Verdict ?* --- If they say, *Yes* ; --- the Clerk shall ask them, *Who shall say for you* They must answer, *The Forewoman*. --- The Clerk desires the Keeper to set the Prisoner to the Bar ; and thereafter saith ---- *E. L. bold up thy Hand*. ---- " You " the Jury of Matrons, look upon the " Prisoner : How say you, is *E. L.* with " quick Child, or not ?" --- If the Forewoman shall say, *She is with quick Child* ; --- then the Clerk adds to the Entry, over the Prisoner's Name upon the Indictment, *Just Matron. dicunt quod est pregnans* ; ---- and says, " You of the Jury of Matrons, hearke " to your Verdict, as the Court hath re " corde

* If in the Night, the Word *Candle* to be omitted.

“ corded it: You say that *E. L.* is pre-
 “ gnant with quick Child, and so you say
 “ all.” — Upon which the Court
 (for the Reverence of God, and lest the
 Child in the Belly of the said *E. L.* should
 suffer Death, for the Crime of the Mother)
 doth order her to be committed to Goal,
 there to remain in safe Custody of the She-
 riff of the County until —.

But if the Forewoman of the Matrons an-
 swer, and say, that *E. L.* the Prisoner, is not
 with quick Child, then the Clerk is to add
 to the former Entry of Judgment, over the
 Prisoner's Name upon the Indictment, *Jur.*
Matron. dicunt quod non est pregnans.—And
 says, “ You of the Jury of Matrons, hearken
 “ to your Verdict, as the Court hath re-
 “ corded it: You say, that *E. L.* is not
 “ pregnant with quick Child, and so you
 “ say all.” — Then he desires the Keeper
 to take the Prisoner from the Bar, and look
 to her; for she stands attainted of High
 Treason.

If any Person indicted of High Trea-
 son, when he or she shall be thereupon
 arraigned, do stand mute, or will not plead
 effectually and directly to the Fact, then
 that is a Conviction. — And the Person so
 standing mute, or not pleading, as afore-
 said, shall not have the Judgment of *paine*
forte & dure; but shall have the Judgment
 of a Traitor convict.

But if the Court find any Reason to
 doubt of the *Sanity* of the Person so stand-

E e ing

What if the
 Matrons shall
 return their
 Verdict, that
 the Prisoner
 is not with
 Child.

Trial of Per-
 sons standing
 mute.

ing mute, before he or she have Judgment, it must be tried by a Jury, whether he or she stand mute fraudulently, wilfully, and obstinately, or by the Providence and Act of God.—And then the Court must command the Sheriff to return a Jury on a Panel, to try that Matter.—And twelve Jurymen named in that Panel, must be sworn; and the Witnesses must be produced and sworn, to prove the Matter against the Prisoner.—The Juryman's Oath is as follows:

Oath of a Jury to try one standing mute.

You shall diligently inquire, and true Presentment make, for, and on Behalf of our Sovereign Lord the King, whether A. B. the now Prisoner at the Bar, being here indicted of High Treason, stands mute fraudulently, wilfully and obstinately, or by the Providence and Act of God, according to your Evidence and Knowledge:----- So help you God.—And kisses the Book.

Manner of delivering suspected Persons.

At the Close, or near the End of the Session of Oyer and Terminer, if there be any Prisoners in the Goal, who are committed for High Treason, or Misprision of High Treason, or Suspicion thereof, and have not been prosecuted and indicted for the same, or having been indicted, the the Grand Jury hath returned the Indictment against them into Court, indorsed *Ignoramus*,--the Court may, if it be thought fit, discharge such Prisoners out of Custody:----- And then, by Direction of the Court, the Clerk bids the Keeper of the Goal,

Goal, call those Prisoners by their Names, and set them to the Bar; and they being at the Bar, bids the Crier make Proclamation with one Oyez, thus:

“ If any one can inform my Lords the
“ King’s Justices, or Advocate-General, of
“ any High Treason, or Misprision of
“ High Treason, or other Misdemeanor,
“ committed or done by *A. B. C. D. E.*
“ *F.* now Prisoners at the Bar, or any of
“ them, let them come forth, and they
“ shall be heard; for the Prisoners stand
“ at the Bar upon their Deliverance.”

Proclamation
to deliver Su-
spects.

BOOK

BOOK II.

Justice Airts, or Circuit Courts.

SECT. I.

Concerning the Constitution of the JUSTICE AIRT, or CIRCUIT COURTS, and their Manner of Procedure before the late Statutes of the 20th and 21st of his present Majesty.

The Circuit
Courts by the
Regulations
1672.

^a Book I.
Sect. I.

^b Cha. II.
Parl. 2. c. 81.

BEFORE the Regulations 1672, the Justice Deputes were the Judges in these Justice Airts, or Circuit Courts, as I formerly mentioned ^a: But they are thereby suppressed, and five of the Lords of Session were added to the Justice-General and Justice-Clerk. — By this Statute ^b Circuit Courts were ordained to be kept once in the Year, in the Month of *April* or *May*, and two of the Lords of Justiciary, were appointed to keep Circuit Courts, at the Burghs of *Dumfries* and *Jedburgh*; — two at *Stirling*, *Glasgow* and *Air*; and other two at the Burghs of *Perth*, *Aberdeen* and *Inverness*. — The Justice-General being always Supernumerary in any of these Courts.

By

By an Act of the Parliament of Great Britain^c it is declared, That, for the future, Circuit Courts shall be held twice in the Year, in the Month of *April* or *May*, and in the Month of *October*, in the several Places mentioned in the foresaid Statute^d.

^c 6 Annæ.
1707.

Circuit Courts
by this Act.

^d Cha. II.
Parl. 2. 1672.

And, by the Queen's Proclamation of the Month of *July* 1708, ---- the Circuit Courts of Justiciary were appointed and ordained to be holden and kept by the Judges and Commissioners thereof, at the Places and upon the Months particularly above mentioned; and to begin their Sessions yearly upon the first lawful Day of *October* and *May* for the Shires, Bounds and Districts after mentioned, upon the Days after expressed; viz.

Division of
the Circuits
by the
Queen's Pro-
clamation.

At the Burgh of INVERNESS, upon the First Day of *October* 1708, and that being an unlawful Day, on the next lawful Day thereafter, for the

1st District.

Shires of	{	Inverness,	and Stew-	{	Orkney
		Ross,			and
		Elgin,			
		Caithness,			
		Sutherland,			Zetland.
		Cromarty			
		and			
		Nairn,			

At

At the Burgh of AIR for the

Shires of { Air, and Jurisdictions within t
and same;
Wigton,

And, at the Burgh of DUMFRIES, for the

Shires of { *Dumfries*
and
Nithsdale, } *and*
Stewar- { *Annanda*
ties of } *and*
Kirkcud-
bright.

ed District.

The *second* District was to begin the Tenth Day of *October* 1708, and that being an unlawful Day, on the next lawful Day thereafter,

At the Burgh of ABERDEEN for the

Shires of { Aberdeen, { *and* Kincardine.
Banff,

At the Burgh of GLASGOW for the

Shires of { Lanerk, { Bute and
 { Dumbarton, { Renfrew.

And, at the Burgh of JEDBURGH, for the

Shires of { Roxburgh,
Berwick,
Selkirk
and
Peebles, } and Bailiary of
Lauderdale.

The *third* District was to commence on the 20th of October, if the same was a law-
Day, and, failing thereof, the next law-
Day thereafter, 3d District.

At the Burgh of PERTH for the

Shires of { Perth, { and Fife.
Forfar, }

And, at the Burgh of STIRLING, for the

Shires of { Stirling, { and Kinross.
Clackmannan, }

And the Circuits were appointed to continue at the said respective Burghs, for the space of six Days for each of the foresaid two Months, holding Courts, if the Business thereof required so much Time; and forth yearly upon the said Days of the foresaid Months, and at the said Places for the Bounds and Districts above mentioned, and

and for the said Space and Number Days yearly in all Time coming.

Attendance on
the Circuit-
courts.

And all Dukes, Marquisses, Earls, Lord Barons, and other Freeholders who he of the Crown, were obliged to give Su and Presence at the said Courts, upon t Days, and at the Places foresaid :—And t Sheriffs and Freeholders within the Shire of *Inverness*, *Air*, and *Dumfries* were required to meet and receive the said Justice at their Entry into the said Shires, upon the Days they should get Advertisement from the said Judges, whereon they were to enter into the foresaid Shires for holding the Circuit-courts, and convey them in the same; and accompany them during their Stay therein, and ay, and while they were received by the next Sheriff and Deputes into the next Shire :—And so to be received, and conducted from Shire to Shire by the respective Sheriffs thereof, according as they should get Advertisement of the particular Days whereon the Judges were to pass, until they returned to *Edinburgh*.

e 8 Annæ
1710.

Attendance of
Noblemen on
the Circuits
abrogated and
taken away by
this Act.

But, by a subsequent Act of the Parliament of *Great Britain* e,—all Attendance of Noblemen, Barons, and Freeholders in *Scotland*, upon the Lords of Justiciary during their Circuits, is abrogated; and taken away as burdensome and unnecessary : And it is thereby enacted,—“ That from and after the 1st of *May* 1710, no Person whatsoever shall be obliged, by him

“ se

“ self, his Tenants, or Servants, to at-
 “ tend the Lords of Justiciary, either in
 “ going to, or coming from the respective
 “ Places where the Circuit-courts are
 “ held; except the Sheriff, or his De-
 “ putes, or their Officers; and that no
 “ Sheriff, by himself, or his Deputes,
 “ or Officers, be obliged to attend the
 “ Lords of Justiciary at any Time or
 “ Place, out of the Bounds of the respec-
 “ tive County whereof such Person is
 “ Sheriff, except at the Place, and during
 “ the Time, where the several Circuit-
 “ courts of the respective Districts shall
 “ be held.—And that, from and after the
 “ said 1st Day of *May*, no Person what-
 “ soever shall be obliged to attend at the
 “ Place, where the Circuit-court is held,
 “ during such Time as the said Court shall
 “ continue there, except such Person or
 “ Persons, who shall be summoned upon
 “ any *Grand* or *Petty* Juries, or who shall
 “ be summoned or bound to give Evidence,
 “ in any Matter or Cause before the said
 “ Court, or who shall be bound over to
 “ appear at such Justice-court, or such
 “ Person or Persons as shall make Present-
 “ ments, in order to Trials before the said
 “ Justices at their Circuits, provided that,
 “ when Presentments are made by the Ju-
 “ stices of the Peace at their Quarter-ses-
 “ sions, or at the yearly Meetings in
 “ *July* and *February*, it shall be lawful to
 “ the said Justices, to depute one or more

From whom,
 and in what
 Cases Attend-
 ance requi-
 red by this
 Act.

“ of their Number to attend in Place of
“ the whole.”

The old Method of taking up Dittays abolished.

By the same Act, it is declared, That Justices of the Peace in *Scotland* may do, use, and exerce over all Persons within their several Bounds, whatever did belong to the Office and Trust of a Justice of Peace, by virtue of the Laws made in *England* before the Union.---By virtue of which Powers and Privileges, they have sufficient Authority to receive Informations, concerning Crimes committed within the respective Counties, and to commit such Offenders, or take Soverty or Recognizance, and to do other necessary Acts for the effectual Prosecution of the said Crimes. In consequence whereof, the old Method of taking up of Dittay, and exhibiting Informations against Delinquents, by the Strefs and Porteous Roll, was grievous, and become unnecessary; therefore all such taking up of Dittay, and exhibiting of Information, by the Strefs and Porteous Roll, is, by the said Act, totally discharged and abolished.

Informations to be made by Presentments from inferior Judges.

And that Information, in order to making up of Dittays, concerning Crimes to be tried in the said Circuits, by this Act, shall be by Presentments to be made by the Justices of the Peace, in their Quarter-sessions, or, upon Informations to be taken by the Sheriffs, and Stewarts or their Deputes, and Magistrates of Burghs, or other inferior Judges concerning such Crimes as are to be tried before the Lords of Justiciary

ary in their Circuits, in the Months of *February* and *July*, yearly.

And the Justices of Peace, or any two of them, are authorised, by the foresaid Act, to meet at the Head-burgh of the respective Shires, within which they are Justices, and at the ordinary Place and Hour of Meeting, upon the 21st Days of *February* and *July*, yearly, being lawful Days, or the next lawful Day thereafter, there to receive such Informations as shall be offered, concerning Matters Criminal to be tried in the Circuits; and to receive such Informations as have been taken before the said Meetings, by the Justices of Peace, otherways than at their Quarter-sessions. And the Sheriffs or Stewarts, and their Deputes, and Magistrates of Burghs, are to meet upon the 22d Days of the foresaid Months of *February* and *July*, yearly, being lawful Days, or on the next lawful Day thereafter, at their ordinary Places of Meeting, and receive such Informations as shall be offered concerning Matters Criminal to be tried in the Circuits.—And the said inferior Judges are to make up particular Accounts of such Criminal Facts, happening within their respective Bounds, as are to be tried before the respective Circuits, containing the Names and Designations of the Offenders, the Facts committed, with the Circumstances of Time, Place, and others that may serve to discover the Truth: As also the Names
and

Manner of
such Present-
ments, and
Transmission
thereof.

and Designations of the Witnesses, and Titles of such Writs as are to be made use of at the Trials; which Informations are to be signed by the Justices of Peace, and their Clerk; or by the Sheriff, or the other inferior Judges and their Clerks respectively, and transmitted with such Writs or other Evidence of Proof, as are to be made use of in the Trials, to the Lord Justice Clerk, or his Deputes, at *Edinburgh*, 40 Days before the holding of the respective Circuit-courts, that Libels, and Indictments thereupon, may be raised and executed against Parties, Affizers and Witnesses, as in other Cases.

Magistrates of Burghs to attend the Circuit-courts, &c.

By the same Act, the Magistrates of such Cities and Burghs, where the respective Circuit-courts are held, are obliged to attend the Lords of Justiciary during their Abode, and prepare convenient Places for the Justices of Peace to sit on at the said Courts, who are declared to have the same Privileges in Court, as the Justices now enjoy in *England*.

The Lord Advocate to inform and prosecute in the same Manner as before the Justiciary-court at *Edinburgh*.

And it is declared, by this Act, that nothing therein contained, shall restrain her Majesty's Advocate, in her Name, or any Person, to inform and prosecute any Criminal Action or Cause before the Circuit-court, in the same Way as in use before the Justiciary-court at *Edinburgh*, or to alter the Method of returning Jurymen or Affizers by the Sheriffs upon Precepts.

By

By a *British* Statute^f, Circuit-courts were appointed to be kept once in the Year, and that in the Months of *April* or *May*, at the several Places, and in Manner and Form, as by Law established.—And that, in all Time coming, the Circuit-courts formerly appointed to be kept in the Month of *October*, yearly, is to cease, excepting only when it should please her Majesty, or her Successors, by a Proclamation, to be issued in the Month of *July* preceeding, to order the said Circuit-courts for the *October* following, to be kept at all, or any of the Places above mentioned.

f 10 Anna
1710,

Circuit-courts,
by this Act, ap-
pointed to be
kept once in
the Year only.

Ever since the above Statute, and till the late Act^g, all Justices of Peace, Sheriffs, and other inferior Judges, within the respective Districts above mentioned, did, upon the 23d of *February*, yearly, meet and receive such Criminal Informations as were presented to them, which they transmitted, signed by them, and their Clerks of Court, to the Lord Justice-Clerk, or his Deputes at *Edinburgh*, together with Lists of Affizers and Witnesses, &c.—And these Informations were recorded in a Book kept for that Purpose, and thereafter delivered to the Lord Advocate, or his Deputes, in order to frame the Indictments; which Indictments were wrote in a Roll called, *The Porteous Roll*, wherein the Names and Designations of Criminals and Witnesses were insert on the one Side, and the Indictment on

g 20 Geo. II.

Manner of
making up the
Porteous Roll.

on the other, for each Shire, in the Form following :

*Roll of Delinquents within the Shire of—
to be tried by the Lords Commissioners
of Justiciary, within the Tolbooth of—
upon the first Day of May 17—.*

Form of the
Porteous Rolls.

Names of the Criminals and their Designations.

A.B. Merchant in---

C.D. Indweller in---

&c.

Names and Designations of the Witnesses.

R. F. Smith in —

D.G. Indweller in---

&c.

D. F.

INDICTMENT.

You, and each
you, are indicted and
accused at the
instance of *D. F.*
Majesty's Advocate
for his Highness's
interest; and at the
instance of *A. L.* private
Party concerned
as guilty, Art and
Part of the Crime
of———*In so far*
(Here the Crimes
libelled). — And
Indictment is signed
by the Lord Advocate,
or his Deputy,
as also he signs
Name with the Witnesses
on the other
Side.——— *D. F.*

This Indictment
in the same Form as
other Cases.

In case any of the Informations were left out of the Rolls, the Lord Advocate wrote his Reason for not inserting the same, either upon the Margin of the Information, as recorded in the Book, or upon the Back of the Presentment itself; and, after the Indictments were framed and signed, the Lord Advocate, or his Depute, delivered the same to the Clerk of Court, to write a Precept thereon; which the Clerk signed by Order of the Lords, directed to the respective Sheriffs of the Shires from whose Bounds the Presentments were transmitted, for executing the same, in the Tenor following:

“ SHERIFF of the Sherifffdom of -----, your Deputes and Officers whatsoever, ye shall, incontinent after Sight hereof, with all Diligence, lawfully summon, arrest, and cause be arrested, the haille Persons Delinquents, particularly above mentioned, dwelling within the Bounds of your respective Jurisdiction, personally, if they can be apprehended; and, failing thereof, at their Dwelling-places, and at the Market-cross of the Head-burgh of the Shire where they dwell, and arrest their Goods and Gear, and take Caution of them if Need bees, that they shall compear before the Lords of his Majesty's Justiciary, in a Circuit Court, to be holden by them within the Burgh of -----,

Precept for
executing the
Porteous
Rolls.

“ the

Precept for
executing the
Porteous
Rolls.

“ the —, —, — and — Days
 “ — next to come, in the Hour
 “ Cause, with Continuation of Days ; the
 “ to underly the Law, for the sever
 “ Crimes mentioned in their respecti
 “ Indictments ; and that ye affix Copi
 “ as effeirs : And also that ye lawfull
 “ summon the haill Witnesses above n
 “ med, to bear leal and soothfast witne
 “ sing, in so far as they know of the sa
 “ Delinquents their Guiltiness of t
 “ Crimes foresaid, with so many hone
 “ and famous Affizers, as dwell with
 “ your Jurisdiction, of the Number co
 “ tained in the List of Affize, herewi
 “ delivered to you, to pass upon the sa
 “ Delinquents their Trial. All to con
 “ pear Days and Place to the Effect for
 “ said, every one of them, under the Pa
 “ of One hundred Merks ; and that
 “ deliver to every Delinquent, a just O
 “ py of his Dittay, with a List of W
 “ nesses, and haill Affizers that are to p
 “ upon their Trial : And also that y
 “ your Deputes and Officers, be prese
 “ at the said Justice-court, before t
 “ down-sitting and fencing thereof, brin
 “ ing with you this Roll, with the Ex
 “ cutions, upon arresting of the said D
 “ linquents, and summoning Witnesses a
 “ Affizers. The which to do, commits
 “ you, conjunctly and severally, full Pow
 “ by this Precept. GIVEN by Warrant
 “ the Lords Justice-General, Justic
 “ Cle

Clerk and Commissioners of Justiciary,
at *Edinburgh*, the — Day of —,
17— Years, under the Hand of J. D.
Clerk to the Justiciary-court."

J. D. Clerk.

These Rolls and Precepts, with the List of the Assizers, were transmitted by the Clerk to the several Sheriffs, in order to be executed as directed.

After the Rolls, &c. were made out, and sent off, the Judges, two and two, set out towards the End of *April*, for their respective Districts, attended with a Macer of Court and two Trumpets. And the Justice-General might go if he pleased, or to any District he pleased.----- But in case any of the Judges, by reason of Sickness or otherwise, was unable to attend the Circuit, then his Colleague might have held that Circuit alone.----- The Procession of the Judges, when they came within the Bounds of their respective Districts, and upon Sabbath Days when going to Church, were very grand and solemn. ---- The Lord Advocate seldom went alongst with the Judges, but gave Commissions to three Advocates, as his Deputes, for prosecuting all Indictments before the several Justice Airts.

The Sheriff-deputes, so soon as the Judges arrived at the Burghs where they were to hold the Circuit Courts, did give in to the Clerk the several Rolls, with

Procedure of
the Judges up-
on the Circuits.

The Porteous
Rolls, with
the Executi-
ons, &c. lod-
ged with the
Clerk.

G g the

the Executions thereof, against the Parties, Witnesses and Affizers; together also with the Bonds of Caution taken by them for Parties compearing, in order to Trial for Crimesailable.

The Day thereafter, the Court being met in their usual Place, and Silence commanded, the Judges ordered the Clerk to fence the Court; which he pronounced to the Macer, who repeated the same, thus:

Form of fencing the Court.

“ I DEFEND and FORBID, in his Majesty’s Name and Authority, and in Name and Authority of the Right Honourable ——— and ———, Lords Commissioners of Justiciary, Judges present, That none presume, nor take upon hand, to trouble or molest this Court, or speak one for another, without Leave asked and given, under such Pains as they may incur by Law.”

GOD save the King.

Advocate-depute and Clerk-depute’s Commissions recorded.

After fencing the Court, his Majesty’s Advocate-depute and Clerk-depute, produced their respective Commissions, which were recorded in the Journal-book of Justiciary, and an Oath *de fidei* was administered to them by the Judges. ---- And if they were not qualified in terms of Law, the Oaths to the Government were likewise administered to them.

There-

Thereafter the Clerk-depute inserted the Sederunt of the Judges present, after the following Manner, viz.

Curia itineris Justiciarii S. D. N. Regis, Sederunt.
tenta in prætorio burgi de ———,
—— die mensis Maii 17—, per hono-
rabiles viros———et——— Commis-
sionarios Justiciarii dict. S. D. N.
Regis.

Curia legitime affirmata.

The several Sheriff-deputes were there-
 after called, and such as were absent un-
 lawed in 100 Merks each, for not attend-
 ing the Court. ---- Such of the Pannels as
 were absent, were fugitate; and absent Af-
 fizers and Witnesses were also unlawed in
 100 Merks each.

Absents un-
 lawed, &c.

But in case of Compearance, then the
 Court proceeded in the Order of the Rolls;
 and Criminals in Prison were ordinarily
 first called.

Procedure of
 the Court
 in case Par-
 ties were pre-
 sent.

The Prisoners being sent for, and en-
 tering the Pannal, the Clerk wrote in the
 Book, thus:

Intran.

A. B. &c. indicted and accused at the Instance
 of D. F. his Majesty's Advocate, for his
 Highness's Interest, for the Crime of Mur-
 der, committed by them in Manner menti-
 oned in their Indictment, contained in the
 Porteous Roll for the Shire of ———.

After

After the Indictment was read, the Judges asked the Pannels, what they had to say to their Indictment? --- And if they denied the Crimes libelled, they were asked, if they had Lawyers to plead for them? If they had none, the Judges appointed them Lawyers out of those who attended the Circuit, and continued the Diet against these Prisoners till next Day:-- But if they had advised Council, then the Clerk inserted in the Book their Names as follows;

Pursuers.	Procurators in Defence.
His Majesty's Advocate- Depute.	Mr. J. G. }
Mr. J. M. Advocate.	Mr. R. D. }
	} Advocates.

Thereafter the Lawyers debated the Relevancy of the Libel *viva voce*, and their pleading was minuted by the Clerk in Court.--And, after the Debate, the Judges either pronounced their Interlocutor upon the Relevancy, or delayed the Determination thereof till next Sederunt.---At which Diet the Interlocutor on the Relevancy was pronounced and recorded, the Jury chosen and sworn, and the Probation adduced.----After which the Jury inclosed, and returned their Verdict the Day following, at a certain Hour appointed by the Court, under the Penalty of 100 Merks.---The Verdict was recorded and sealed in the same Manner as before noticed ^h.----

There-

Thereafter the Judges pronounced Sentence.

And in case, at any of the Districts, the Judges were straitened in point of Time, so that they could not overtake the whole Trials, they continued such of them as wereailable Crimes till the next Justice Air, and ordained the Prisoners to be liberate upon their finding Caution for their appearance, and remitted others to be tried by the Court of Justiciary at *Edinburgh*.---If any of these that were so remitted, were capital Offenders, then Warrant was granted for transporting them to *Edinburgh* accordingly.

After the Porteous Rolls were ended, the Judges ordered the respective Sheriffs to be called, and put in the Pannal, and a proclamation in Court was made,---“That if any Person or Persons, had any Information of Crimes against the Sheriffs present, they might compear, and they should be heard.”---And if any Information was so given in, and found *relevant* and *proven*, they were immediately put to Affize, and punished accordingly, as our old Law prescribes ⁱ.

The Judges, after recommending to the inferior Judges present, to be faithful in putting the Laws in Execution against all delinquents; as also, to cause frequently publish the Act *anent murdering of Children*, as is therein required ^k.---Declared the Justice Air ended; which the Clerk pro-

The Judges continued Trials till next Circuit, or remitted them to the Court of Justiciary.

The Procedure against the Sheriffs.

ⁱ P. 1487.
c. 103.

^k W. and M.
P. 1. Act 21.

pronounced to the Macer, who repeated the same, thus :

“ The Lords Commissioners of Justiciary, and I in their Name, declare the Justice Air in this Place, to be ended.”

S E C T. II.

Concerning the Alterations in the Justiciary Courts, or Circuit Courts, by the late Statutes of the 20th and 21st of his present Majesty. — The Appeals from inferior Courts introduced by those Statutes ; with the Form of Procedure therein.

AS Circuit Courts was introduced for the manifest Utility of the Lieges where Trials could be easier carried on and attended with far less Expence, than in the Justiciary-court at *Edinburgh* ; when the Number of these Courts are increased, and not only so, but their Jurisdiction, Powers and Privileges greatly enlarged, it must be acknowledged, on all hands to be the peculiar Blessing of the Subject, and worthy of the Wisdom of our Legislature.

1 20 Geo. II.

Circuit Courts
to be held
twice in the
Year.

Wherefore Circuit Courts by this Act are appointed to be regularly held twice in the Year, viz. in *April* or *May*, and in *September* or *October*, and the Judges thereof is to continue by the Space of six Days

at least, at each Town or Place where the Circuit Courts shall be held, for the Dispatch of Business. — And any one of the Judges in such Circuit Courts may dispatch Business, whenever it shall happen that his Colleague, through Indisposition or other necessary Avocation, shall be absent, and the Justice-General not being present at such Circuit Court.

One Judge may act in Absence of his Colleague.

The County or Shire of *Argyll*, and all the Islands, Places, Districts, and Bounds lying within, or subject to the Jurisdiction of Justiciary, belonging to his Grace *The Duke of Argyll*, is to be deemed and taken within the Limits of the Circuit, called *The Western Circuit*, or of such other Circuit in *Scotland*, as shall be appointed by his Majesty, or his Successors, in virtue of the Power after mentioned. --- And the Judges of the said Circuit, shall have and exercise the same Jurisdiction, Powers, and Authorities within the said Shire of *Argyll*, and the Islands and Bounds thereto belonging respectively, as in any other Shire or County within the said Circuit.

The Western Circuit to take in the Shire of *Argyll*.

The Burgh of *Inverary* being the Head-burgh of the said Shire of *Argyll*, is appointed by this Act to be the Place where the Circuit Court is to be held twice in the Year, for the Counties or Shires of *Argyll* and *Bute*.

The Circuit Court to be held at *Inverary* for the Shires of *Argyll* and *Bute*.

By the same Act, Persons conceiving themselves aggrieved by any Interlocutor, Decree, or Sentence of the Sheriff's or Stewart's

Parties aggrieved by Sentences of inferior Judges in Matters Criminal and Civil, not exceeding

L. 12. Sterling, may apply, by Appeal, to the Circuit-courts.

Time of lodging such Appeal.

Copy to be delivered to the Respondents.

Service of the Appeal to be sufficient Summons.

Stewart's Courts of any Shire or Stewartry or of the Courts of Royal Burrows, Burgh of Regality or Barony, or of the Court of any Baron or other Heritor, having such Jurisdiction as is not abrogated and taken away, by the said Act; where such Interlocutor, Decree, or Sentence shall be concerning Matters Criminal (except in Cases which infer the Loss of Life, or Demeritation, or in Matters civil, where the Subject-matter of the Suit did not exceed in Value the Sum of Twelve Pounds *Sterling*), may apply, and seek Relief against the same by Appeal to the next Circuit-court, of the Circuit wherein such Jurisdiction lies: And no such Appeal is competent before a final Sentence pronounced.—Appeals may be taken and entered in open Court, at the Time of pronouncing such Decree or Sentence, or at any Time thereafter within ten Days, by lodging the same in the Hands of the Clerk of Court, and serving the adverse Party with a Duplicate thereof personally, or at his Dwelling-house, or his Procurator, or Agent in the Cause, and serving in like Manner the inferior Judge himself, in case the Appeal shall contain any Conclusion against him, by Way of Censure or Reparation of Damages, for alledged wilful Injustice, Oppression, or other Malversation:—And such Service shall be sufficient Summons to oblige the Respondents to attend and answer at the next Circuit-court, which shall

shall happen to be held fifteen Days at least after such Service.—And thereupon the Judge or Judges at such Circuit-court shall proceed to cognosce, hear, and determine any such Appeal or Complaint, by the like Rules of Law and Justice, as the Court of Session or Court of Justiciary respectively, may now cognosce and determine in Suspensions of the Interlocutors, Decrees and Sentences of such inferior Courts: But the said Circuit-court shall proceed therein, in a summary Way; and, in case they shall find the Reasons of any such Appeal not to be relevant, or not instructed, or shall determine against the Party so complaining or appealing, the said Judge or Judges shall condemn the Appellant or Complainer in such Costs, as the Court shall think proper to be paid to the other Party, not exceeding the real Costs *bona fide* expended by such Party:—And the Decree or Sentence of such Circuit, in any of the foresaid Cases, to be final.—And where-ever such Appeals shall be brought, such Complainer, at the Time he enters his Appeal, as aforesaid, shall lodge, in the Hands of the Clerk of Court, from which the Appeal is taken, a Bond, with a sufficient Cautioner, for answering and abiding by the Judgment of the Circuit-court, and for paying the Costs if any shall be awarded; and the Clerk of Court shall be answerable for the Sufficiency of such Cautioner.

Circuit Courts to proceed in a summary Way in hearing Appeals.

And to award Costs.

Judgment to be final.

Appellant to give Bond and Security.

The Clerk answerable for the Security.

H h

This

This Act, as to Appeals in Civil Causes, only to be in Force for 10 Years.

In case of Difficulty, Circuit-courts may certify Appeals to the Court of Session or Justiciary.

His Majesty to make a new Division of the Circuits.

This Act, so far as concerns Appeals in Civil Causes, is only to be in Force for the Space of ten Years from the 15th of *March* 1748, and to the End of the then next Session of Parliament, and no longer.

It is further provided, by this Act, that, in case such Circuit-courts, shall, in recognoscings and proceeding upon such Appeals, find any Difficulty to arise, that, by means thereof, they cannot proceed to the Determination of the same consistently with Justice, and the Nature of the Case; then, in such Cases, and not otherways, they may certify such Appeals, together with the Reasons of such Difficulty, and the Proceedings thereupon, before the Circuit-courts, to the Court of Session or Court of Justiciary respectively, which Courts are authorised and required to proceed in and determine the same.

By the same Act, it is declared, That it shall be lawful for his Majesty, his Heirs and Successors, by an Order of Privy Council, to make a new Division and Distribution of the Circuits in *Scotland* or any of them, and to appoint and allot, what Counties, Shires, Stewarties, Places, Districts and Bounds, shall be comprehended within any such Circuit, and at what Times and Places the Circuit-courts shall be held respectively, for ever after; and such Order so to be made, shall be duly observed, performed, and obeyed; and the Judges, in such new Circuits, so to be appointed,

pointed, shall have, and enjoy the same Jurisdiction, Powers, and Privileges, as formerly.

And that Circuit-courts shall continue to be held at such Towns, as are appointed for keeping and holding of Circuit-courts by the Act of Parliament 1672, or by this Act, without Prejudice to the Power vested in his Majesty, to diminish, augment, or alter the Districts for which such Circuit-court shall be held, in Virtue of the Provision before mentioned.

And the Court of Justiciary are authorised, by this Act, to regulate the Fees to be paid to the Clerks or other Officers officiating in the Circuit-courts, or the Sheriffs or Stewart-courts in Criminal Cases, by one or more Acts of Adjournal, on or before the 25th of *March* 1748, which shall be binding on all Parties concerned, unless altered by Act of Parliament.

And, by the subsequent Statute ^m, it is enacted, "That, until a new Distribution
" and Division of the Circuits in *Scotland*
" shall be made in Pursuance of the foresaid
" Act, the Judges, appointed to hold the
" Circuit-courts at *Dumfries* and *Jedburgh*,
" shall likewise be appointed to hold the
" Circuit-court at *Air*, which shall be
" deemed to be within the Limits of the
" Circuit, commonly called, *The Southern*
" Circuit, until such new Division shall be
" made, as said is."

In

Circuit-courts
to be held in
the Towns ap-
pointed by the
Act 1672.

Officers Fees
to be regulate
by the Court
of Justiciary.

^m 21 Geo. II.

The Judges
for *Dumfries*
and *Jedburgh*
Circuit to hold
the Circuit at
Air.

Division of
the Circuits.

In consequence of an Order of the Privy Council, the Places for holding the Circuit-courts are fixed by the Court of Justiciary, as follows, *viz.*

SOUTHERN DISTRICT.

At the Burgh of AIR for the

Shires of { *Air and*
Wigton.

At the Burgh of DUMFRIES for the

Shire of { *Dumfries,* } *and* { *Annandale*
Stewar- { *and*
ties of { *Kirkcud-*
bright.

At the Burgh of JEDBURGH for the

Shires of { *Roxburgh,* } { *Selkirk*
Berwick, } { *and*
Peebles.

WESTERN DISTRICT.

At the Burgh of STIRLING for the

Shires of { *Stirling,* } { *and Kinross,*
Clackmannan, }

At

At the Burgh of **GLASGOW** *for the*

Shires of { Lanerk,
Dumbarton, } *and Renfrew.*

At the Burgh of **INVERARY** *for the*

Shires of { Argyll
and
Bute.

NORTHERN DISTRICT.

At the Burgh of **INVERNESS** *for the*

Shires of { Inverness,
Ross,
Elgin,
Caithness, } *and Stew-* { Orkney
Sutherland, } *arties of* { and
Gromarty } Zetland.
and
Nairn, }

At the Burgh of **ABERDEEN** *for the*

Shires of { Aberdeen,
Banff, } *and Kincardine.*

At

Division of
the Circuits.

In consequence of an Order of the Privy Council, the Places for holding the Circuit-courts are fixed by the Court of Justiciary, as follows, *viz*,

SOUTHERN DISTRICT.

At the Burgh of AIR for the

Shires of { *Air and*
Wigton.

At the Burgh of DUMFRIES for the

Shire of { *Dumfries,* } *and* { *Annandale*
Stewar- *and*
ties of { *Kirkcud-*
bright.

At the Burgh of JEDBURGH for the

Shires of { *Roxburgh,* } *Selkirk*
Berwick, } *and*
Peebles.

WESTERN DISTRICT.

At the Burgh of STIRLING for the

Shires of { *Stirling,* } *and Kinross,*
Clackmannan, }

At the Burgh of **GLASGOW** *for the*

Shires of { Lanerk,
Dumbarton, } *and Renfrew.*

At the Burgh of **INVERARY** *for the*

Shires of { Argyll
and
Bute.

NORTHERN DISTRICT.

At the Burgh of **INVERNESS** *for the*

Shires of { Inverness,
Ross,
Elgin,
Caithness, } *and Stew-* { Orkney
Sutherland, } *arties of* { and
Gromarty } Zetland.
and
Nairn,

At the Burgh of **ABERDEEN** *for the*

Shires of { Aberdeen,
Banff, } *and Kincardine.*

At

At the Burgh of PERTH for the

Shires of { Perth, { *and Fife.*
 { Forfar, {

These Courts are to continue for *forty* Days, at each of the foresaid Places, longer, if the Business so require it; and the Court of Justiciary are to give public Notice of the respective Days upon which the Judges are to hold their Circuit-court two Months at least, before their Departure from *Edinburgh*.

The Manner of making up the Porteous Rolls, and executing the same, &c. is not altered by the foresaid Statutes:—And the Procedure in Criminal Trials, before the Circuit-court, is the same as formerly, excepting that the Method used in producing the Evidence to Writing, in Trials not inferring the Loss of Life, and Imprisonment, obtains likewise in the Circuit-courts, as well as in such Trials before the Justiciary-court at *Edinburgh*.

Follows the Form of an Appeal in Criminal Causes, taken from a Sentence of an inferior Judge to the Circuit-court.

I *A. B.* conceiving myself aggrieved by Judgment or Sentence pronounced up

—Day of— instant by D. C.
stitute to Mr. W. M. Advocate, his Ma-
ty's Sheriff-depute of the Shire of—
the Criminal Action or Prosecution, pur-
ed at the Instance of D. E. with Con-
urse of H. J. Procurator-fiscal of the
d Sheriff-court, for his Interest, against
e, for a Bloodwitt or Battery, alledged
mitted by me upon the Person of the
d D. E. in Manner set forth in the Li-
i, raised thereanent, whereby the said
eriff-substitute fined and amerciate me in
Sum of— (here the Sentence is ta-
down)—Do therefore APPEAL for
lief and Redress against the Sentence, to
e Lords Commissioners of Justiciary in
eir next Circuit-court to be held at—;
d that, for the Reasons following, viz.
re the Reasons of Appeal are insert).—This
e appeal I lodge in open Court, offering
ution, and serving the Prosecutors with
Duplicate thereof in Terms of the Act of
liament, upon the—Day of—
—Years. A. B.

At taking the Appeal, there must be a
nd lodged with the Clerk of Court not
ly to answer and abide by the Judgment
be given upon the Appeal, but also to pay
at Costs the Circuit-court shall award,
case the Sentence be affirmed.—The
orm of the Bond is as follows :

I A. S. Bind and oblige me, my Heirs
and Executors, and Successors, as Cau-
tioner

Form of the
Bond of Cau-
tion.

“ tioner and Surety acted in the Sheri
“ court Books of ——— for *A. B.* that
“ shall answer and abide by the Judgme
“ to be given by the Lords Commissione
“ of Justiciary in their next Circuit-cou
“ to be held at ———, upon hearing t
“ Appeal taken by him, against a Se
“ tence pronounced by *D. C.* Substitute
“ Mr. *W. M.* Advocate, his Majest
“ Sheriff-depute of the foresaid Shire
“ ——— upon the ——— Day of ———, in t
“ Criminal Action or Prosecution pursu
“ at the Instance of *D. E.* with Concou
“ of *H. J.* Procurator-fiscal of the sa
“ Sheriff-court, for his Interest, again
“ the said *A. B.*: AND ALSO, that t
“ said *A. B.* shall make Payment to t
“ said *D. E.* and *H. J.* Procurator-fisc
“ for his Interest, of whatever Expenc
“ the said Lords in Circuit shall please m
“ dify in case of wrongous Appellation
“ and the said *A. B.* binds and oblig
“ him, his Heirs and Successors, for h
“ Cautioner's Relief in the Premises.”

“ 21 July

1749.

Appeals must
be lodged with
the Clerk in
order to be in-
rolled before
holding the
Circuit-courts.

These Appeals are ordained by Act
Adjournal”, to be lodged in the Hand
of the Clerk of Court, in order to be in
rolled, and that, on or before the first Da
appointed for holding the Circuit-court
in the several Stations respectively, wit
Certification, that, if Parties shall not com
ply with the Directions of the said Act
Adjournal, such Appeals shall not be re
ceived, but shall be held as not entered
leaving

leaving to the Appellant to take such other Remedy as accords of the Law.

When the Appeals are called, (which is not done till after all the Trials are over), the Parties are heard by their Council *viva voce*: And thereafter the Lords give Judgment therein, in the Form following.

“ THE Lords——— and —— Com-
 “ missioners of Justiciary, and Judges,
 “ appointed to hold the Circuit-court at
 “ —— having considered the Appeal brought
 “ at the Instance of *A. B.* complaining of a
 “ Sentence pronounced by the Sheriff-sub-
 “ stitute of—— upon the—— Day of—— last,
 “ in a Criminal Action or Prosecution, pur-
 “ sued at the Instance of *D. E.* with Con-
 “ course of *H. J.* Procurator-fiscal of the
 “ said Sheriff-court, for his Interest, against
 “ the said *A. B.* for a Bloodwitt or Battery,
 “ committed by him upon the Person of
 “ the said *D. E.* in Manner mentioned in
 “ the Libel raised thereanent, (of which
 “ an Extract was produced), whereby the
 “ said Sheriff-substitute fined and amer-
 “ ciate the said *A. B.* in the Sum of——,
 “ &c. And, having heard Council for the
 “ Appellant and Respondent, and, after
 “ due Consideration had of what was offered
 “ *hinc inde* by them in the Cause, the said
 “ Lords REVERSE the foresaid Sentence of
 “ the said Sheriff-substitute of ——.”
 Or, “ The said Lords AFFIRM the fore-
 “ said Sentence of the said Sheriff-substi-
 I i “ tute

Form of the
 Judgment up-
 on an Appeal.

“ tute of—— ; AND ORDAIN the same to
 “ take Effect, and be put to Execution a-
 “ gainst the said *A. B. &c.*”

If the Judgment award Costs, then it
 will run thus ; —— “ AND ORDAIN the
 “ said *A. B.* Appellant to make Pay-
 “ ment to the said *D. E.* and *H. I.*
 “ Respondents, of the Sum of ——, in
 “ name of Costs or Expences.” —— On
 this Judgment there is an Extract given
 out by the Clerk, upon which Execution
 will immediately follow, as the Judge-
 ment is by the Act of Parliament declared
 to be final. —— And it is appointed by the
 foresaid Act of Adjournal °, That, in Case
 where Appellants do not lodge their Ap-
 peals as thereby directed, the Judges are
 to award such Expences to the Respondent
 as they shall see Cause.

Appeals in Civil Causes are *similar* to
 those in Criminal : —— Only a Bond or
 Caution must be lodged at taking the Ap-
 peal in every Cause, else (’tis believed) the
 Appeal will have no Effect to stay Exe-
 cution : — The Form of which Bond dif-
 fers in nothing from the preceeding one
 and must in every Case bear a Clause to
 pay such Costs or Expences as shall be a-
 warded by the Circuit-court.

The Judges may, in Cases of Difficulty,
 certify Appeals to the Court of Session, or
 Court of Justiciary respectively ; but they
 must

° 21st July
 1749.

must likewise certify the Reasons of such Difficulty in terms of the Statute P. —

P 13th May
1749.

And the Court of Session, or Court of Ju-
sticiary, in such Cases do proceed in the
same Manner as they do in other Causes,
which are originally brought before them.

Luke contra,
The Magi-
strates of
Glasgow.

*TABLE of Fees to be paid the Clerks and
Macers of the Circuit Courts in Criminal
Causes, where there is a private Pursuer,
and by the Pannels in every Cause, as re-
gulate by Act of Adjournal.*

Scots Money.

TO the Clerk at reporting Cri- minal Letters, Indictment in the Porteous Roll, or Ex- culpation, &c. - - -	I	10	0
For every Witness examined -	0	18	0
For Exculpation or Diligence -	I	10	0
For a Bail-bond for a Pannel's Ap- pearance - - -	3	0	0
For deserting a Diet, or affoilzie- ing a Pannel, - - -	3	0	0
For an Application for sustaining an Excuse for a Witness or Af- fizer - - -	I	4	0
For qualifying any Person, and for Certificate, - - -	I	4	0
For an Extract of an Act of Ad- journal; for the first Sheet -	3	0	0
Every other Sheet - - -	I	16	0

Table of the
Fees to the
Clerks and
Macers of the
Circuit-courts
in Criminal
Causes.

To

To the Macer when a private Pursuer.

	Scots	Money,
For every Witness examined	-	0 6 0
For every Petition or Answer	-	0 12 0
For a Bail-bond	-	1 10 0
For deserting a Diet, or affoizling a Pannel,	-	1 10 0

TABLE of Fees to be paid the Clerks and Macers of the Circuit Courts in Civil Cases.

	Scots	Money.
F OR inrolling the Cause in a Roll, to be made up before sitting of the Circuit-court	- -	0 4 0
For every Party and Witness's Deposition to the Clerk	- - -	0 12 0
To the Macer for the same	- -	0 4 0
For an Extract of the Lords Sentence or Judgment to the Clerk	- - -	3 0 0
To the Clerk for each Person qualifying in terms of Law, and for the Certificate thereof,	- -	1 4 0

Table of Fees
to Clerks and
Macers of the
Circuit-courts
in Civil
Causes.

APPEN-

APPENDIX,

CONTAINING

The FORM of PROCESS

IN

Causes CRIMINAL and CIVIL,

Proposed to be observed in the SHERIFF
and STEWART COURTS in *Scotland*:

WITH

TABLES of the FEES to the Clerks,
and other Officers in these *Courts*.

I. In CRIMINAL CAUSES.

AS the Procedure in Causes Criminal, before the Sheriff and Stewart Courts, appointed to be observed by the late Regulations, are similar to those pursued before the Court of Justiciary at *Edinburgh*, where the Trial proceeds by Jury, and so have a near Connexion with the foregoing Forms; it will be therefore necessary, according to the Method proposed, to begin with these.

The

The Regulations appointed to be observed in the Sheriff and Stewart Courts, in Criminal Causes, are as follows, *viz.*

Informations to be by way of Petition signed by the private Party or Procurator-fiscal.

I. THAT in all Crimes which by their Nature require, that the Party accused should be incarcerated before Trial, Application shall be made to the Sheriff by Petition, signed by the private Party complaining, or by the Procurator-fiscal, setting forth the Nature of the Crime, and upon considering thereof, the Sheriff shall grant Warrant, for apprehending and incarcerating the Party informed against, till such Time as he shall be liberated in due Course of Law.

Crimes which are to be tried by Jury.

II. THAT Crimes which infer Loss of Life, Transportation, Banishment forth of Scotland, or Demembration, and others of great Importance, shall only be tried by Jury, unless where the contrary is provided by special Statute.

In such Trials the Forms of the Court of Justiciary are to be followed.

III. THAT in Crimes to be tried by Jury, the Forms of the Court of Justiciary shall be followed; excepting only that in all Cases, the Proof, with the Objections to the Witnesses, and Answers shall be taken down in writing.

In other Trials, Defenders must be cited

IV. THAT in the Trial of Crimes without Jury, where the Form is not directed by special Statute, the Party accused shall be

be cited upon a proper Summons signed by the Clerk, and fully libelled; which Summons shall charge the Defender to appear *personally*, and to find Caution, entered in the Sheriff-books, that he shall make answer to the Libel, and appear at all the Diets of Court.

to find Caution to appear, upon a proper Summons.

V. THAT the Officer who executes the Summons, shall deliver to the Defender, if he finds him *personally*, or if he does not find him, shall leave at his Dwelling-house, a full Copy of the Summons, together with a List of the Names and Designations of the Witnesses to be adduced against him. — That the Officer's Execution shall certify the Delivery of such Copy and List, and that six free Days shall intervene betwixt the Day of the Citation and the Day of Appearance, exclusive of both these Days.

Such Defenders to have a full Copy of the Summons, &c.

VI. THAT every *Criminal* Summons, shall contain a Warrant for citing Witnesses, conform to a List to be signed by the Prosecutor, and given in to the Clerk, and such Witnesses shall be cited to appear on the same Day, to which the Defender is cited.

Criminal Summonses to contain a Warrant for citing Witnesses.

VII. THAT the Defender against whom any *Criminal* Summons is executed, may take out Letters of Exculpation for proving his Defence, if such Proof be necessary;

Defender may have Letters of Exculpation for citing Witnesses.

fary ; which Letters the Clerk shall be obliged to give out, on Application of the Defender, who shall therein cause cite his Witnesses, to appear on the same Day to which he is himself cited.

In what Cases Application to be by summary Complaint.

VIII. THAT in all Cases which require extraordinary Dispatch, the private Party aggrieved, or the Procurator-fiscal, may apply to the Sheriff by summary Complaint, who will (if he see Cause) ordain the Complaint to be intimated to the Defender, and him to appear personally in Court, and to make Answer to the same upon such *induciae* as the Sheriff shall think proper.

If the Pursuer is absent, the Diet to be deserted, and Costs awarded.

IX. THAT if at the Day appointed the Defender appear, and the Pursuer be absent, the Diet shall be declared to be deserted, and the Sheriff shall, if the Circumstances of the Case require it, award full Costs, so as to indemnify the Defender ; which Costs may be thereafter recovered by all manner of legal Diligence.

Defender absent ; Warrant to be granted for apprehending him.

X. THAT if at the Day appointed, the Defender do not compear and find Caution, as above, the Sheriff shall grant Warrant to apprehend and detain him till he find Caution.

XI. THAT after Caution is found, if the Defender fail to compear, his Bail-bond shall

shall be declared forfeited, and in both Cases, whether Caution has been found or not, the Sheriff may (if the Nature of the Case admit of it) further proceed to consider the *Relevancy* of the Libel, and admit the same to the Pursuer's Probation, and to pass such Sentence as may be pronounced against a Person in absence.

Defenders not
compearing,
to forfeit their
Bail-bond.

XII. THAT upon the Day of Compearance, the Defender shall either give in all his Defences in writing, or shall make answer *viva voce*, to the Facts contained in the Libel; and, upon advising the Libel and Defences, the Sheriff shall either pronounce an Interlocutor upon the Relevancy, or in case of Difficulty, shall ordain Informations to be given in.

Defences to
be given in in
writing, or
pled *viva voce*,
&c.

XIII. That after pronouncing Interlocutor upon the Relevancy, the Sheriff shall forthwith proceed to examine the Witnesses adduced *hinc inde*, upon the Facts admitted to Probation; — but Probation by Oath of Party shall not be allowed in any Case, where the Fact referred has *Turpitude* in it, or where the Consequence may be more than pecuniary.

The Sheriff to
proceed to
examine Wit-
nesses *hinc in-
de*, after de-
termining the
Relevancy.

XIV. THAT if upon advising the Proof, the Sheriff shall find the Defender guilty of what he is charged with, he shall fine, incarcerate, or inflict corporeal Punishment, according as the Circumstances of

And after ad-
vising the
Proof, to pro-
nounce Sen-
tence, &c.

K k the

the Case require, and shall in all Cases grant Warrant for imprisoning the Defender, until he shall make Payment of the Sums decerned against him, or till the Day assigned for inflicting the corporeal Punishment.

Time in which Sentences inflicting capital Punishments, are to be put in Execution.

9 11 Geo. I.
c. 25.

Or for corporeal Punishments less than Death or Demem-
bration.

3 Geo. II.
c. 32.

Sheriffs to attend the Meetings on the

XV. THAT no Sentence of any Sheriff inflicting capital Punishment or Demem-
bration, pronounced in any Shire lying to the Southward of the Frith, or River of *Forth*, shall be put to Execution within less than 30 Days after the Date of such Sentence; and if pronounced in any Shire lying to the Northward of the said Frith, or River of *Forth*, it shall not be put to Execution within less than 40 Days after the Date of such Sentence, in terms of the Statute^a.

XVI. THAT no Sentence of any Sheriff, importing any corporeal Punishment less than Death or Demem-
bration, shall be put to Execution within less than 12 Days after the Date of such Sentence^r:—And that, in the several Cases referred in this, as well as in the preceeding Regulations, the respective Days, upon which Sentence is pronounced and executed, shall not be numbered.

XVII. THAT the Sheriff or his Substitute shall attend, at the ordinary Court-house, and Place of meeting yearly upon the

the 22d Days of *July* and of *February*, being lawful Days, or on the next lawful Day thereafter, if these be not lawful Days, to receive such Informations as shall be offered concerning Matters Criminal, which have happened within his Jurisdiction, and may be tried at Circuit-courts in Terms of the Statute ^f.

22d of July and February, yearly, to receive Informations of Crimes to be tried at the Circuit-courts.

^s 8 Annæ c. 16.

XVIII. THAT, if he find any of these Informations to be Articles of Dittay, he shall make up particular Accounts of the Criminal Facts, containing the Names and Designations of the Offenders; the Facts committed, with the Circumstances of Time and Place; the Names and Designations of the Witnesses, and the Titles of such Writs as are to be made use of at the Trials ^t.

And to make up Accounts of the Criminal Facts, &c.

^t *Ibid.*

XIX. THAT these Informations shall be signed by the Sheriff and the Clerk, and the Clerk shall transmit the same, with the first Opportunity, to the Lord Justice-Clerk, or his Deputes, together with such Writs or other Evidence of Proof as may be necessary to be made use of in the Trial; and that the Clerk shall, at the same time, transmit a List of forty five Persons proper and fit to pass upon the Affize of Criminals ^u.

Informations are to be signed by the Sheriff and Clerk, and transmitted to Edinburgh.

^u *Ibid.*

XX. That, in the Choice of the Affize, Care be taken that it be made in such Manner, as to be as little burdensome as possible,

Affizers how to be chosen.

ble, and without any Kind of Partiality, and none shall be put upon this Service but Persons qualified, and in a Condition to bear the Expence which necessarily attends it.

Warrant to be granted for executing the Porteous Rolls.

XXI. THAT, when the Porteous Roll, and Precept for executing it, is returned to the Sheriff, he shall, without Delay grant Warrant to his Officers to execute the same.

Sheriffs and Officers to attend Circuit-courts.

XXII. THAT the Sheriff, or his Substitute, and the Officer or Officers, who executed the Roll, shall attend the Circuit-court, and bring along with them the Roll, together with the Executions thereof.

TABLE

TABLE of the Fees and Dues of Clerks and other Officers in Sheriff and Stewart-courts in Criminal Cases, as regulate by Act of Adjournal, 21st March 1748.

	Scots Money
W HEN a private Pursuer, to the Procurator-fiscal for his Concurrence - - -	0 14 6
For every Complaint and Warrant to cite to the Clerk - -	0 12 0
For every Oath of a Party to the Clerk - - - -	0 12 0
To <i>ditto</i> for an Oath of a Witness, for the first six each -	0 12 0
Every Oath above that Number -	0 6 0
To the Clerk for every Petition or Answer - - - -	0 12 0
To <i>ditto</i> for Letters of Intimation or Liberation, besides Dues of the Petition - - -	0 18 0
To <i>ditto</i> for Petition, and Information, and Warrant of Commitment, - - -	1 10 0
For Criminal Letters to <i>ditto</i> for the first Sheet - -	1 10 0
Every other Sheet - -	0 18 0
To Bill, and Letters of Diligence on Indictment, - -	1 10 0
To <i>ditto</i> for Bill and Letters of Exculpation - - -	1 10 0
For a Bail-bond from a Defender for Appearance - -	1 10 0
	To

Scots Money

To Clerk from the Defender at deserting the Diet - - - 1 10 0

For recording every Sheet of Information, either for Pursuer or Defender - - - 1 0 0

For every Appeal entered against any Decreet, Sentence or Judgment, there be paid to the Clerk, by the Appellant, for recording the Appeal, and taking the Bond of Caution - - - 0 12 0

To the Clerks and Servants for extracting DECREETS, ACTS or COMMISSIONS for the first Sheet 1 10 0

For every other Sheet - - - 0 18 0

That the Clerk insert the said Appeal in every Extract to be thereafter given out by him of such Decreet, for which his Dues are to be paid after the same Rate as the rest of the Extract.

That each Sheet of an Extract, written Sheet-ways, consist of forty nine Lines, at the Rate of thirteen Words in the Line; and, if wrote Book-ways, that it consist of two Pages, and of thirty six Lines in each Page, and after the Rate of nine Words in the Line.

Scots Money.

To the Officer for summoning a Party or Witness, to himself and two Witnesses to the Execution, his Employer furnishing the Copy, - - -	o 8 o
But, if the Parties or Witnesses cited, exceed three in Number, and are within one Mile of one another, in that Case only for each, - - -	o 6 o
Item, for each Mile, the Officer and his two Witnesses travel, from the Place of his Residence, there shall be paid to him a further Sum of six Shilling (providing always that the whole Sum paid the Officer for himself and his two Witnesses, do not exceed Half a Crown for one Day, whatever be the Number of Miles, or Number of Parties or Witnesses, to be summoned, and that the Employer furnish Copies,) -	o 6 o
To the Bar Officers that attend the Court, for the Oath of each Party or Witness, - -	o 1 o
To the Officer and Witnesses for summoning a whole Assize of forty five Persons in Town, or a Mile round, the Employer furnishing the Copies, - -	2 5 o
	II. In

II. In *CIVIL CAUSES*.

THE Regulations appointed to be observed in the Sheriff and Stewart-courts, in Causes Civil, are as follows, *viz.*

Parties must be cited on a proper libelled Summons.

I. That no Person shall be obliged to appear before the Sheriff-court, unless he be cited upon a proper Summons, signed by the Clerk, and fully libelled.

And to have a full Copy of the Libel, except where there are more Defenders than one; and in Poindings of the Ground.

II. THAT the Officer, who executes the Summons, shall deliver to the Defender, if he find him personally, or, if he find him not, shall leave at his Dwelling-house a full Copy of the Libel to the Will:--That, there be more Defenders than one, each shall be served with a Copy of such Part of the Libel as concerns him; and, in poindings of the Ground, the Tenants shall be served with short Copies, and the Proprietor with a full one; the Officer's Execution always certifying the Delivery of such Copies respectively.

Not to extend to Actions for Sums under 30 s. *Sterling*.

III. THAT the two preceeding Articles shall not extend to Actions for any liquid Sum under Thirty Shillings *Sterling*; but that, in all such Actions, the Form of summoning Defenders shall continue, and take place, as formerly, subject to such Variations as may be made by the several Sheriffs within their respective Jurisdictions.

IV. THAT

IV. THAT all Summonses shall contain only one Diet of Compearance, and that six free Days shall intervene between the Day of Citation and the Day of Compearance, exclusive of both those Days; and that the Day of Compearance shall always be an ordinary Court-day.

All Summonses to contain and be execute to one Diet only.

V. THAT every Officer who returns an Execution, bearing the Defender to have been cited to a different Day, from that specified in the Copy left with the Defender, shall be subject to the Parties Damages, and otherwise punished as the Law directs.

Penalty on Officers in case of executing to a different Diet.

VI. THAT, upon the Day of Compearance, and, in all the After-procedure, the Parties may either appear personally, or by a Procurator of Court; such Procurator, when appearing for a Defender, having, in all Cases, a written Mandate, or being judicially authorised by the Defender.

Procurators to have written Mandates from Defenders.

VII. THAT, upon the Day of Compearance, or any After-court-day, during the Concurrence of the Summons, and before Litis-contestation, the Defender may crave Protestation against the Pursuer for not insisting; and, upon producing the Copy of Citation, and, the Pursuer's failing to appear and insist, the Sheriff shall admit the said Protestation; and the Protestation-money shall be modified by the Sheriff, according to Circumstances, so as

Protestation to be admitted in case of not insisting.

to indemnify the Defender for his Trouble and Expences, besides the Expence of extracting the Protestation.

Time limited
for extracting
Protestations.

VIII. THAT the above mentioned Protestation shall not be extracted, till after the Expiry of six free Days, after the Day of pronouncing thereof; and, being extracted, the Defender may recover the Sums therein contained, by all Manner of legal Diligence.

In case Protestation be not extracted, the Pursuer to be allowed to insist upon Payment of the Protestation-money.

IX. THAT, if the Protestation be not extracted, the Pursuer shall be allowed to call and insist in his Action, without the Necessity of a new Citation, upon paying over to the Defender, or his Procurator, or, in their Absence, consigning in the Clerk's Hands, for the Defender's Use, the Sum awarded by the Protestation, without the Expence of the Extract.

But, if extracted, the Instance falls.

X. THAT, in case the Protestation be extracted, the Pursuer shall fall from that Instance, and the Defender shall not be obliged to answer, but upon a new Summons and Citation, upon the ordinary *inducia*.

Defenders absent to be held as confest, &c.

XI. THAT, if the Defender be absent, and it appear that the Citation was personal, the Sheriff shall either hold the Defender as confest, or allow such other Proof as the Pursuer or his Procurator shall desire, but, if the Citation be not personal,

nal, the Sheriff shall, in that Case, either decern in Absence, or, if demanded, admit the Libel to the Pursuer's Probation.

XII. THAT if, at calling of the Cause, the Defender or his Procurator demand to see the Process, in order to make his Defences, the Sheriff shall allow the same till the next Court-day, or may ordain him to see the Process, and give in his Defences to the Clerk of Court, against a shorter Time, as he shall see Cause.

Defender's
Procurator to
be allowed
Time to see
the Process.

XIII. THAT, against the Day appointed, the Defender shall give in, in Writing, all his Defences, both *dilator* and *peremptor*, which the Sheriff shall either advise in Court, or allow the Pursuer to see and answer, against such a Day as he shall appoint; and, when Answers are given in, the Sheriff may either advise the Debate as it then stands, or allow the Defender a reasonable Time to reply; and, after giving in the Reply, the Debate shall be understood to be concluded, and the Sheriff shall proceed to advise the same, unless he think proper to direct further Debate, or to appoint Informations to be given in.

Defences to be
given in, in
Writing, &c.

XIV. THAT, after Defences have been given in, as above, no new Defence, unless recently come to Knowledge, shall be received, without Payment of an Amand of One Shilling *Sterling*, to be disposed of to

No new De-
fence to be
received with-
out an Amand.

to the other Party, or put to such other Use as the Sheriff shall think fit.

The Proceſs to be returned to the Clerk under an Amand.

XV. THAT upon the Day affigned for giving in Defences, Answers, Replies or Informations, the Proceſs ſhall be returned to the Clerk, by the Perſon who received it, under an Amand of One Shilling *Sterling*, to be diſpoſed of, as above.

In what Manner Improbation is to be proponed.

XVI. THAT Improbation againſt the Executions of Proceſs, or againſt any Writ, founded upon by either Party, ſhall not be received, unleſs proponed by the Party who makes the Challenge perſonally, or by his Procurators ſpecially authoriſed for that Purpoſe, by a written Mandate, and upon Conſignation of Twenty Shillings *Sterling*, to be forfeited to the other Party, in caſe the Propoſer ſhall afterwards paſs from, or fail in his Improbation, beſides what Coſts and Damage ſhall be awarded againſt them, at the Concluſion of the Cauſe, and other legal Conſequences of failing in the Improbation.

Oaths of Calumny, when to be admitted,

XVII. THAT if, at any time, an Oath of Calumny be inſiſted for, when the Perſon, of whom it is demanded, is not preſent, the ſame ſhall not be admitted, except upon Conſignation of Two Shillings and Six-pence *Sterling*, to be forfeited to the other Party, in caſe the Oath be thereafter paſt

past from, or come out Negative of the Calumny.

XVIII. THAT two reclaiming Petitions shall be allowed against every Interlocutor; but no After-petition shall be received, except upon Confignation of One Shilling and Six-pence *Sterling*, which is to be restored to the Configner, by Warrant of the Sheriff, in case the Petition contain Matter of Importance, come to the Petitioner's Knowledge, since giving in the former Petition, otherwise to be disposed of, by the Sheriff, as above.

No third Petition against Interlocutors to be received except upon Confignation of 1 s. 6 d.

XIX. THAT all reclaiming Petitions shall be lodged with the Clerk, the Evening before they are to be moved in Court, otherwise they shall not be received, unless upon Payment of One Shilling *Sterling* to be disposed of, as above.

Reclaiming Petitions to be lodged with the Clerk.

XX. THAT, when Parties differ as to Facts, the Sheriff, if he find Cause, may order both, or either of them, to confess or deny such Facts, either personally in Court, or by a Writing under their Hand; and, if the Party fail to comply with the Order, he shall be held as confest.

Parties to be ordained to confess or deny Facts.

XXI. THAT, when a Proof is necessary, the Party who insists for it shall condescend upon his Mean of Proof; and, if it be by the Oath of the other Party, a Day shall

Parties to condescend on their Mean of Proof.

shall be assigned for the said Party's appearing and deponing.

Reference to
Parties Oaths
when to be
made.

XXII. THAT, in all Cases, where the Value of the Matter in Issue exceeds the Sum of Thirty Shillings *Sterling*, no Procurator shall be allowed to refer or defer any Allegation to the Oath of Party, unless he be authorised by his Client present in Court, or by a written Mandate from him for that Purpose. But, if the Value of the Matter in Issue does not exceed the Sum of Thirty Shillings *Sterling*, such Reference or Deference may be effectually made by the Party's Procurator, without the Necessity of a written Mandate.

Term to be
circumduced
against Parties
who do not
appear to de-
pone.

XXIII. THAT, if the Party do not appear upon the Day assigned him to depone, the Term shall be circumduced against him, and he held as confest; but, if he do appear, his Oath shall be taken, the other Party paying the Dues thereof.

Diligence to
be granted a-
gainst Havers
and Witnesses.

XXIV. THAT, if the Mean of Proof be by Writings, not in the Party's Hands or by Witnesses, a Day shall be assigned for recovering such Writings, or for proving by Witnesses, and Diligences shall be granted for that Effect, to be reported against the Day assigned.

Term to be
circumduced
for not report-
ing.

XXV. THAT, when the Day assigned for the Diligence is elapsed, the Party who obtained

obtained it shall report the same ; and, if he do not, the Term shall be circumduced against him : And, if the Witnesses do not appear, second Diligence shall be granted, on Suit of the Party, for apprehending and securing them, until they find Caution to appear at the Time to which the Diligence is current.

Second Diligence to be granted against Witnesses.

XXVI. THAT, when the Proof is concluded, the Cause shall be called, and Circumduction granted on the Motion of both, or either Party.

Circumduction when to be granted.

XXVII. THAT, when a Point has been referred to Oath of Party, and thereafter another Mean of Proof is demanded, the same shall be allowed, provided the Person who made the Reference pay, over the Bar, the full Expences the other Party has been put to, by the Reference then past from.

When Reference has been made to Oath of Party, in what Case another Mean of Proof is to be allowed.

XXVIII. THAT no Party shall be reponed against a Circumduction, except upon a Petition showing Cause to excuse his former Failure, and upon Payment of such Sum as the Sheriff shall modify, for indemnifying the other Party.

In what Cases Parties are to be reponed against Circumduction.

XXIX. THAT, where a Proof is concluded, and Interlocutor pronounced thereon, the Sheriff shall not allow any further Proof, except upon very weighty Reasons shown

In what Cases further Proof is to be allowed.

shown by the Party who applies therefore; and upon Payment of an Amand, to be determined by the Sheriff, besides indemnifying the other Party, as above: — But in all Cases the Oath of Party is to be allowed, if demanded, any time before extracting the Decreet.

Expences
must be fixed
by an Interlo-
cutor.

XXX. THAT the Sum of Expences to be given in any Decreet, whether in Absence or *in foro*, shall be fixed specially by Interlocutor, and no Expences shall be modified of Course, nor by a general Reference to the Conclusions of the Libel.

Time in
which De-
creets are to
be extracted.

XXXI. THAT no Decreet shall be extracted till after the Expiry of six free Days, exclusive of the Day upon which it was signed by the Sheriff, and of the Day of extracting thereof, unless otherwise allowed by the Sheriff.

In what Cases
Application
by summary
Petition is to
be made.

XXXII. THAT in all Cases which require extraordinary Dispatch, and where the Interest of Parties might suffer by abiding the ordinary *Induciæ*, Application by summary Petition may be made to the Sheriff, who will, if he see Cause, ordain the Petition to be intimated to the Defender, and Answers to be made thereto upon such *Induciæ* as to him shall seem proper; and he will likewise, where it is necessary, pronounce an Interdict, to be intimated along with the Petition.

XXXIII. THAT

XXXIII. THAT the Clerk shall be authorized to issue out Precepts of Arrestment, upon producing to him a Summons duly execute, or a written Document of the Debt for which Arrestment is sought, the Precept always setting forth the Ground of the Arrestment; and there shall not be granted any blank Warrant for Arrestment.

Precepts for Arrestment on the Dependance, &c. to be issued.

XXXIV. THAT when Application is made to the Sheriff, to interpone his Authority to a Baron's Decreet, the Party against whom the Decreet was obtained, shall be regularly cited to hear and see the same interponed, otherwise the Sheriff will have no Regard to the Application.

Parties to be summoned to hear the Sheriff's Authority interponed to a Baron's Decreet.

XXXV. THAT the Clerk shall keep a Diet-book, in which shall be marked the several judicial Steps of Process, the Acts and DECREETS: And all Causes shall be called and determined, according to the Order in which they are marked in this Diet-book.

The Clerk to keep a Diet-book.

XXXVI. THAT the Diet-book shall fix the Custody of the Process, upon the Person by whom it is taken out, or to whom it is returned judicially: — That the Custody of Processes borrowed up from the Clerk extrajudicially, shall be fixed by a Receipt-book, which he shall keep for that Purpose.

Diet-book to fix the Custody of the Process, &c.

M m

XXXVII. THAT

Captions to be
granted for
Return of Pro-
cesses.

XXXVII. THAT if a Procurator keep up a Process, of which he has the Custody, longer than is proper, the Sheriff, upon Application, will grant a Caption against him for reproducing the Process, and the Procurator complained upon, shall pay the Expence of the Caption.

* 20 Geo. II.

Sheriff-de-
putes must be
Advocates of
three Years
standing. —
May appoint
Substitutes,
who must
take the Oaths
to the Govern-
ment.

By the late Statute * it is provided, That there shall be one Sheriff, or Stewart-depute in each County or Stewarty, who must be an Advocate of three Years standing at least, to be appointed by the King, and he is removeable by his Majesty at pleasure during the first seven Years after the Act took place, and thereafter is to be for Life, or *ad vitam aut culpam*.—He is impowered to nominate one or more Substitutes, to hold the Office during his Pleasure, for whom he shall be answerable; and who, before they enter upon their Office, must in the Sheriff-court take the Oaths appointed by Law to be taken by Persons in Offices of publick Trust, and which must be there recorded.

May hold
Courts at any
time. —
Must reside
four Months

THE Sheriff-deputes, or their Substitutes, may hold their Courts at any time of the Year, as well during the Vacation of the Court of Session, as during the sitting thereof,

thereof, and may hold itinerant Courts, giving previous Notice of the same, to be published at the respective Parish-churches within the District for which the same are to be held. — And such Depute must reside personally, at least four Months in the Year, within his County or Stewarty. — He is disabled to advise, plead, or otherwise act as Advocate, in any Cause arising within the same; and in case he shall be guilty of any gross Misdemeanor, or Neglect of Duty, he is liable to a summary Trial of the same before the Court of Session, at the Suit of his Majesty's Advocate, or four of the Freeholders, intitled to vote in the Election of Members of Parliament, for such County or Stewarty, and upon Conviction to be deprived of his Office. — And that such Sheriff, or Stewart-depute, who is presumed to be expert in the Law, may not be interrupted in the Dispensation of Justice by himself or his Substitutes, the Principal or High-sheriff or Stewart, is debarred from judging in any Cause, Civil or Criminal.

No Fines, Forfeitures or Penalties, imposed in the Sheriff or Stewart Courts, can by this Act, go to the Sheriff or Stewart Deputes, or their Substitutes, but all Shares thereof, which heretofore belonged to them, shall accrue to his Majesty, his Heirs and Successors, to be paid in to the Exchequer in *Edinburgh*, and to be levied

in the Year in their Counties. — Are disabled to concern themselves in Causes within the same, &c.

No Share of the Fines goes to the Sheriff or Stewart-depute. And Sentence-money discharged, in place whereof Salaries are paid them by the Crown.

vied as other Fines, Forfeitures and Penalties, becoming due to his Majesty: And Sentence-money is entirely taken away; but instead thereof, Salaries are appointed to each Sheriff and Stewart Depute in *Scotland*, to be paid out of the Exchequer.

Lands formerly disunited now subject to the Sheriff or Stewart Courts, where they locally lie.

AND whereas, by several Grants of heritable Jurisdictions, Lands lying within one Shire or Stewarty had been disunited from the same, and annexed to another, to the great Prejudice, Interruption of Justice, and Inconveniencies of the Subjects, all such Charters and Grants are repealed, and made void by this Act, with respect to the Sheriff and Stewart Courts, and the Lands disunited are restored and annexed to the Shires or Stewarties within which they locally lie; and in case they are interjected between two, they are annexed to that County, to the Head-burgh of which they are next adjacent. --- But this Restriction not to alter the Case as to Voting for Members of Parliament, or vary the Payment of the Land-tax.

Prison-houses of Heritors are to be visited by the Sheriff, and entered in his Clerk's Books.

ALL Barons, or other Heritors, are, by this Act, to enter in a Book to be kept by the Sheriff-clerk of the County, the House, Room, or Place, that shall be used by him, as a Prison for Imprisonments for Rents or other small Debts; which shall be so situated, and have such Windows and Grates open

open to Inspection from without, as any Friend of the Prisoner may see and converse with him ;—and the Sheriff is required to visit and inspect such Room, and to disallow or prohibit the Use of the same, in case it shall appear to be grievous or unhealthy, or not agreeable to the foresaid Regulations :—Nor can any Person be imprisoned, in order to Trial, without a Warrant in Writing, expressing the particular Case, which shall be entered into a Book to be kept for that Purpose, and Extracts thereof transmitted, within six Months, to the Sheriff-clerk of the County, there to remain on Record.

The Case of Commitment in order to Trial.

THE Records, Decrees, and Proceedings relative to any Civil or Criminal Cause in the abrogated Courts, were, by this Act, ordained, on or before the 25th *June* 1748, to be transmitted by the Possessors, to the Courts of the respective Sheriffs, and Stewarts of Counties, and there lodged and kept among the Records of such Courts, and the Judges thereof are enjoined to proceed thereupon, as if the said Civil or Criminal Causes had been originally commenced before themselves.

The Records and Proceedings of the abolished Courts to be transmitted to the Sheriff or Stewart-courts.

AND, upon the Application of the Sheriff-deputes to the Court of Session, concerning the Transmission of these Records, &c. The Lords, by their Act of Sederunt, of the 24th of *July* 1752,—“ FOUND, “ That

ACT of SEDERUNT anent Transmission of the Records, &c. of the abrogated Courts.

ACT of SEDE-
RUNT anent
Transmission
of the Records,
&c. of the ab-
rogated
Courts.

“ That the Lords of Regalities, and other
“ Proprietors of the abrogated Jurisdicti-
“ ons, and their Clerks and Keepers of
“ their Registers and Records, were in
“ Contempt by not giving Obedience to
“ the foresaid Act: And that, where Part
“ of such Regalities lie in different Shires
“ or Stewarties, the Records and Writings
“ that concern such Lands, as lie severally
“ in different Sheriff-ships, shall be deli-
“ vered into the Sheriff-court, where the
“ Lands lie, as for Instance, That a Part
“ of the Land formerly belonging to a
“ Regality, lies in the Shire of *Inverness*,
“ and Part in the Shire of *Aberdeen*, or
“ *Perthshire*; that the Writs and Records
“ of such Lands, as belong to the Shire of
“ *Inverness*, or appear to concern Persons
“ or Suitors, that were residing in the Shire
“ of *Inverness*, at the Time of the said
“ Regality, or other heritable Jurisdiction
“ were abolished, and were then residing
“ at the Time, when the Suits were car-
“ ried on against them, before the Rega-
“ lity-court, shall be delivered into the
“ Sheriff-court of *Inverness*; and, in like
“ Manner, such as concern the County, or
“ Persons residing in *Aberdeen* or *Perth-*
“ *shire*, shall be delivered into the Sheriff-
“ court of *Perth* or *Aberdeen* respectively,
“ and so with regard to all Sherifffdoms,
“ within which any Land formerly belong-
“ ing to, or that made Part of any Rega-
“ lity do now lie.—AND ORDAINED such
“ Delivery

“ Delivery to be made on or before the
 “ 10th of *November* next, N. S. with Cer-
 “ tification that they will, upon Applica-
 “ tion of any of the Sheriff-deputes or their
 “ Clerks, grant Letters of Horning against
 “ those that were Lords or Proprietors of
 “ the Regalities, or other Courts now a-
 “ bolished, and those that were Clerks to
 “ the same, at the Time such Abolition
 “ did take place; and, in case such Per-
 “ sons shall neglect or refuse to give Obe-
 “ dience to the foresaid Act of Parlia-
 “ ment and this Act, the Lords DECLARE,
 “ they will proceed against them by fining
 “ or Imprisonment, in such Manner as is
 “ agreeable to Law:—And such Persons
 “ shall not be obliged to make up Inven-
 “ taries of the Writs so to be delivered,
 “ or be at the Expence thereof, but they
 “ shall be obliged to depone and make
 “ Oath, if required, before the Sheriff of
 “ the Sheriff-court, into which the Wri-
 “ tings are to be delivered, that they have
 “ no Records or Writings, but those that
 “ are delivered in, nor have fraudfully put
 “ away any of them, nor know or suspect
 “ where they are.—And, in case any Dif-
 “ ficulty arise as to what Sheriff-court such
 “ Records or Writings should be deliver-
 “ ed, then such Records and Writings
 “ shall be delivered to the Sheriff within
 “ whose Jurisdiction the Head-burgh of
 “ the Regality-court, or Place where the
 “ Regality and other Courts were holden:
 “ AND the Lords ALSO DECLARE, That
 “ they

THE ACT OF SEDE-
 RUNT anent
 Transmission
 of the Records,
 &c. of the ab-
 rogated
 Courts.

“ they will grant the like Diligence, by
 “ Horning, Fining, or otherwise, against
 “ all such who shall be found to be Pos-
 “ sessors, or have in their Custody any
 “ Records or Writings that belong to such
 “ abrogated Courts, if they do not deliver
 “ them as above directed:—And any She-
 “ riff who believes or suspects, that the
 “ Records or Writings that belonged to
 “ any Regality-court, and ought to be
 “ delivered, as said is, are in the Custo-
 “ dy or Possession of any Person, may
 “ complain summarily to the Sheriff, with-
 “ in whose Jurisdiction such Person re-
 “ sides, who shall be obliged to answer
 “ upon Oath, whether he hath any such
 “ Writings, and must deliver them into
 “ the Sheriff intitled to receive the same..”

The Mini-
 sterial Office
 of the Sheriff-
 deutes.

THE Sheriff-deutes, or their Substi-
 tutes, are obliged, by their Office, to serve
 Writs directed to them in order to the
 Election of Members of Parliament, and
 also all Writs issued to them from the
 Court of Exchequer, relating to the Re-
 venue, Excise, &c.—The Powers of
 Sheriffs, and the Duty of their Office, with
 the Nature and Import of the several Writs
 returnable by them, are largely treated
 of by several learned Authors, to whom
 must refer the curious Reader, and particu-
 larly by the learned and ingenious Mr. *And-
 drew MacDowal* Advocate, in his *Inst. Vol.*
II. Book 4. Tit. 14th Sheriff and Stewart
courts.

T A B L E

*TABLE of the Fees and Dues of Clerks
and other Officers in Sheriff and Stewart-
courts in Civil Causes, as regulate by Act
of Sederunt 16th March, 1748.*

Scots Money.

For registering each Sheet of Hornings, Interdictions, Inhibi- tions, and Lawburrows, with their Executions, to Clerk and Servants - - -	o 16 6
For an Extract of a Horning, In- hibition, Interdiction, or Law- burrows, with the Execution, for the first Sheet, to Clerk and Servants - - -	o 14 o
Every other Sheet - - -	o 12 o
For registering every Sheet of Bonds, Instruments of Protest, Tacks, Dispositions, and In- ventaries of Heirs entering <i>cum</i> <i>beneficio</i> , and for any other Wri- tings given in to be registrate, to Clerk and Servants - - -	o 14 6
For an Extract of the Fiars to Clerk and Servants - - -	o 8 o
For every Libel or Summons, where the Sum is under Forty Pound Scots - - -	o 6 o
For a Libel or Summons where the Sum is above forty Pound Scots - - -	o 12 o

N n

For

Scots Money.

For every Precept for summoning Witnesses and Parties <i>pro con- fesso</i> - - - -	0 2 0
Letters of Arrestment, or loosing thereof - - - -	0 10 0
For a Petition, or Answer -	0 6 0
For writing a Bond of Cautionry	0 12 0
For receiving thereof -	0 6 0
For producing an Advocation -	0 12 0

*For writing of Depositions of Parties and
Witnesses.*

For every Deposition of a Party -	0 12 0
For each of the first six Witnesses	0 12 0
For every other Witness -	0 6 0
To the Clerk for extracting every Decreet not exceeding Twenty five Pound Scots - - -	0 12 0
To the Clerk for extracting every Decreet exceeding Twenty five Pound, and not exceeding Forty Pound Scots - - -	1 0 0
To the Clerk for extracting every Decreet exceeding Forty Pound, and not exceeding Sixty Pound Scots - - - -	1 16 0
For writing and recording each Sheet of these DECREETS -	0 6 0
To Clerks and Servants, for ex- tracting all DECREETS, ACTS, or COMMISSIONS, in Causes exceed- ing	

Scots Money.

ing Sixty Pound *Scots* in Value,
for the first Sheet -

1 10 0

For every other Sheet - -

0 18 0

But, for every repeated Sheet of
a Decreet, where any Acts or
Commissions have been extract-
ed, only - - -

0 8 0

For every Sheet of Decreets of
Transumpt - - -

0 14 6

That each Sheet of an Extract,
written Sheet-ways, consist of
forty nine Lines, at the Rate of
thirteen Words in each Line;
and, if wrote Book-ways, that
it consist of two Pages, and of
thirty six Lines in each Page,
and after the Rate of nine
Words in the Line.

That, for every Appeal entered
against any Decreet, Sentence or
Judgment, there be paid to the
Clerk, by the Appellant, for re-
cording the Appeal, and taking
the Bond of Caution - -

0 12 0

And that the Clerk insert the said
Appeal in every Extract, to be
thereafter given out by him
of such Decreet, for which his
Dues are to be paid after the same
Rate as the rest of the Extract.

And the Lords ordain the said se-
veral Clerks duly and faithfully
to record all the Decreets ex-

tracted

Scots Money.

tracted by them under the highest Penalties inflicted by the Law on such Neglects of Duty.

For a general Service, to Clerks and Servants drawing the Claim, and expediting the Service, and to Officers and Witnesses for executing the Brieve at the Market-crofs, - - - 9 0 0

For Acts of Curatory, and Process for making up tutorial or curatorial Inventories, each Sheet 3 0 0

For special Services, as follows.

To drawing the Claim, expediting the Service, and giving the Retour or Extract of the Service, including Officers and Witnesses Fees for executing the Brieves, for the first Sheet, - 9 0 0

For every other Sheet - 3 0 0

For Seifins to be paid, as follows.

1^{mo}, The current Price of the Velum or Parchment for the Time.

2^{do}, For the first Sheet that it fills up of the Clerk's Prothocall as Notary - - - 4 0 0

And for every other Sheet - 3 0 0

That

That the Clerk receive for his Pains, for taking the Infestment, as follows.

Scots Money.

If it is taken at the Distance from the Clerk's Office of three Miles, or under, that he be paid for an Estate not exceeding Two thousand Merks of yearly Rent	12	12	0
If exceeding Two thousand Merks and not exceeding Five thousand Merks	25	4	0
If exceeding Five thousand Merks, and not exceeding Ten thousand Merks	37	16	0
If exceeding Ten thousand Merks, and not exceeding Twenty thousand Merks, -	50	8	0
And for any Estate exceeding Twenty thousand Merks -	63	0	0
And no more whatever the Estate be.			
If it exceeds three Miles, that three Pound be paid for every other Mile, that the Clerk taking the Seisin shall be obliged to travel to the Place where Seisin is given, until it amounts to ten Miles, -	3	0	0
And, if it exceed ten Miles, for every other Mile -	1	10	0
For Sequestration of a Bankrupt Tenant's Effects, such a Sum as shall be judged reasonable			

by

Scots Money.

tracted by them under the highest Penalties inflicted by the Law on such Neglects of Duty.

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And for any Estate exceeding Twenty thousand Merks -	63	0	0
And no more whatever the Estate be.			
If it exceeds three Miles, that three Pound be paid for every other Mile, that the Clerk taking the Seisin shall be obliged to travel to the Place where Seisin is given, until it amounts to ten Miles, - -	3	0	0
And, if it exceed ten Miles, for every other Mile -	1	10	0
For Sequestration of a Bankrupt Tenant's Effects, such a Sum as shall be judged reasonable			

by

Scots Money.

by the Sheriff, the Highest
 not exceeding - - 12 0 0
 The lowest not under - 3 0 0
 And for each Person qualifying in
 Terms of Law, and for the
 Certificate thereof, - 1 4 0
 For transacted Processes and De-
 creets, the one Half of what
 they would have amounted to
 if extracted.

And that Services of Relicts to
 their Terce pay one Half of spe-
 cial Services, Services of Tuto-
 ry to pay as general Services,
 and Services of Idiocy and
 Furiosity, to pay as general Ser-
 vices, and the Witnesses to be
 paid for as in other Processes.

To the Officer for summoning a
 Party or Witness, or charging
 to make Payment on Decreet
 or Precept, to himself, and two
 Witnesses to the Execution. - 0 8 0

But, if the Parties or Witnesses ci-
 ted or charged, exceed three in
 Number, and are within one
 Mile of one another, in that
 Case only for each - - 0 6 0

Item, For each Mile the Officer
 and his two Witnesses travel,
 from the Place of his Residence,
 there shall be paid to him a fur-
 ther Sum of Six Shilling, (pro-
 vided

Scots Money.

vided always that the whole Sum paid the Officer, for himself and his two Witnesses, do not exceed Half a Crown, for one Day, whatever be the Number of Miles, or Number of Parties or Witnesses to be summoned) o. 6 o

To the Bar-officers that attend the Court, for the Oath of each Party or Witness, - - o. 1 o

For executing of a Caption for Reproduction of a Process - o. 6 o

The Officer for himself, Witnesses and Apprisers, &c. to be paid for Poindings at the Discretion of the Party Employer, for which the Officer assigns him to the Sheriff-fee.

And the several Officers in the Sheriff or Stewart-courts are prohibited to take, accept, or receive any other or higher Fees for any Matters pertaining to their respective Offices in Criminal or Civil Causes, than those contained in the foregoing Tables respectively; and Persons offending may either be punished by the Sheriff or Stewart-depute in the Court to which he belongs; or that, upon summary Complaint to the Court of Justiciary, in Criminal, or Court of

of Session, in Civil Causes, they will take Cognizance of such Offences, and punish Persons offending by Deprivation from his or their Offices, or otherwise according to the Nature and Degree of the Offence, besides their making full Reparation to the Party injured.

FINIS.

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